APPENDIX A

SUPREME COURT OF CALIFORNIA OPINION

198 P.3d 66 (Cal. 2009)

Jan. 5, 2009.

As Modified on Denial of Rehearing Feb. 25, 2009.

IN THE SUPREME COURT OF CALIFORNIA

	)	
	)	S155094
	)	Ct.App. 4/3
EPISCOPAL CHURCH	)	G036096,
CASES	)	G036408 &
	)	G036868
	)	Orange County
	)	JCCP No. 4392

In this case, a local church has disaffiliated itself from a larger, general church with which it had been affiliated. Both the local church and the general church claim ownership of the local church building and the property on which the building stands. The parties have asked the courts of this state to resolve this dispute. When secular courts are asked to resolve an internal church dispute over property ownership, obvious dangers exist that the courts will become impermissibly entangled with religion. Never-

theless, when called on to do so, secular courts must resolve such disputes. We granted review primarily to decide how the secular courts of this state should resolve disputes over church property.

State courts must not decide questions of religious doctrine; those are for the church to resolve. Accordingly, if resolution of the property dispute involves a doctrinal dispute, the court must defer to the position of the highest ecclesiastical authority that has decided the doctrinal point. But to the extent the court can resolve the property dispute without reference to church doctrine, it should use what the United States Supreme Court has called the "neutral principles of law" approach. (*Jones v. Wolf* (1979) 443 U.S. 595, 597.) The court should consider sources such as the deeds to the property in dispute, the local church's articles of incorporation, the general church's constitution, canons, and rules, and relevant statutes, including statutes specifically concerning religious property, such as Corporations Code section 9142.

Applying the neutral principles of law approach, we conclude that the general church, not the local church, owns the property in question. Although the deeds to the property have long been in the name of the local church, that church agreed from the beginning of its existence to be part of the greater church and to be bound by its governing documents. These governing documents make clear that church property is held in trust for the general church and may be controlled by the local church only so long as that local church remains a part of the general church. When it disaffiliated from the general church, the

local church did not have the right to take the church property with it.

We must also resolve the preliminary procedural question of whether this action is subject to a special motion to dismiss under Code of Civil Procedure section 425.16 — generally called an "anti-SLAPP motion."[1] We conclude that this action is not subject to an anti-SLAPP motion. Although protected activity arguably lurks in the background of this case, the actual dispute concerns property ownership rather than any such protected activity. Accordingly, this action is not one "arising from" protected activity within the meaning of Code of Civil Procedure section 425.16, subdivision (b)(1). Hence, that provision does not apply.

We affirm the judgment of the Court of Appeal, which reached the same conclusions, although not always for the same reasons.

I. FACTS AND PROCEDURAL HISTORY

"The Protestant Episcopal Church in the United States of America . . . , organized in 1789, was the product of secession of the Anglican church in the colonies from the Church of England, the latter church itself being the product of secession from the Church of Rome in 1534." (*Protestant Episcopal Church v. Barker* (1981) 115 Cal.App.3d 599, 606.) The church (hereafter the Episcopal Church) is governed by a general convention and a presiding bishop. In the United States, the Episcopal Church

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[1] The acronym "SLAPP" stands for "strategic lawsuit against public participation." (See *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 57 & fn. 1.)

is divided geographically into dioceses, including the Episcopal Diocese of Los Angeles (Los Angeles Diocese). Each diocese is governed by a diocesan convention and a bishop. A diocese is itself divided into missions and parishes, which are individual churches where members meet to worship. A parish is governed by a rector and a board of elected lay persons called the vestry. (See *Protestant Episcopal Church v. Barker*, *supra*, at pp. 606-607.) One such parish within the Los Angeles Diocese was St. James Parish in Newport Beach (St. James Parish).

St. James Parish began as a mission of the Episcopal Church in 1946. In 1947, members of the mission sought permission from the Los Angeles Diocese to organize as a parish. The members' handwritten application "promise[d] and declare[d] that the said Parish shall be forever held under, and conform to and be bound by, the Ecclesiastical authority of the Bishop of Los Angeles, and of his successor in office, the Constitution and Canons of the [Episcopal Church], and the Constitution and Canons of the Diocese of Los Angeles." Articles of Incorporation of St. James Parish, filed with the California Secretary of State on March 1, 1949, stated that the corporation was formed "[t]o establish and maintain a Parish which shall form a constituent part of the Diocese of Los Angeles in [the Episcopal Church]; and so that the Constitution and Canons, Rules, Regulations and Discipline of said Church . . . and the Constitution and Canons in the Diocese of Los Angeles, for the time being shall, unless they be contrary to the laws of this State, always form a part of the By-Laws and Articles of Incorporation of the corporation hereby formed and shall prevail against and govern

anything herein contained that may appear repugnant to such Constitutions, Canons, Rules, Regulations and Discipline . . . ." In 1991, St. James Parish amended its articles of incorporation, but it did not modify these provisions.

In 1950, the "Bishop of the Protestant Episcopal Church in Los Angeles" deeded the property on which the church building stands to St. James Parish for consideration of "less than $100.00." The deeds to the property have been in the name of the local church ever since.

Canon II.6 of the canons of the general convention of the Episcopal Church provides:

"Sec. 1. No Church or Chapel shall be consecrated until the Bishop shall have been sufficiently satisfied that the building and the ground on which it is erected are secured for ownership and use by a Parish, Mission, Congregation, or Institution affiliated with this Church and subject to its Constitution and Canons.

"Sec. 2. It shall not be lawful for any Vestry, Trustees, or other body authorized by laws of any State or Territory to hold property for any Diocese, Parish or Congregation, to encumber or alienate any dedicated and consecrated Church or Chapel, or any Church or Chapel which has been used solely for Divine Service, belonging to the Parish or Congregation which they represent, without the previous consent of the Bishop, acting with the advice and consent of the Standing Committee of the Diocese.

"Sec. 3. No dedicated and consecrated Church or Chapel shall be removed, taken down, or otherwise disposed of for any worldly or common use, without

the previous consent of the Standing Committee of the Diocese.

"Sec. 4. Any dedicated and consecrated Church or Chapel shall be subject to the trust declared with respect to real and personal property held by any Parish, Mission, or Congregation as set forth in Canon I.7.4."

The record shows, and no one disputes, that the Episcopal Church first adopted the original versions of sections 2 and 3 of Canon II.6 in 1868. It added section 1 of that Canon in 1871 and section 4 in 1979 when it amended Canon I.7.

In 1979, in apparent response to that year's United States Supreme Court opinion in *Jones v. Wolf*, *supra*, 443 U.S. 595, the Episcopal Church added section 4 to Canon I.7 (Canon I.7.4), which provides: "All real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof in which such Parish, Mission or Congregation is located. The existence of this trust, however, shall in no way limit the power and authority of the Parish, Mission or Congregation otherwise existing over such property so long as the particular Parish, Mission or Congregation remains a part of, and subject to, this Church and its Constitution and Canons."

Recently, as a result of a doctrinal dispute, St. James Parish disaffiliated itself from the Episcopal Church. It appears that the dispute leading to the decision to disaffiliate arose after the national church ordained an openly gay man as a bishop in New Hampshire in 2003. Some members of the Episcopal Church, including members of St. James

Parish, disagreed with this ordination. In July 2004, the board of St. James Parish voted to end its affiliation with the Episcopal Church and to affiliate with the Anglican Church of Uganda. A majority of the congregation voted to support the decision. After the disaffiliation, a further dispute arose as to who owned the church building that St. James Parish used for worship and the property on which the building stands — the local church that left the Episcopal Church or the higher church authorities.

To resolve this dispute, the Los Angeles Diocese and various individuals, including a dissenter from the decision by St. James Parish to disaffiliate (hereafter collectively Los Angeles Diocese), sued various individuals connected with St. James Parish (defendants) alleging eight property-recovery-related causes of action. Later, the national Episcopal Church successfully sought to intervene on the side of the Los Angeles Diocese and filed its own complaint in intervention against defendants. In essence, both sides in this litigation, i.e., defendants on one side, and the Los Angeles Diocese and Episcopal Church allied on the other side, claim ownership of the local church building and property on which it stands.

The defendants moved to strike the Los Angeles Diocese's lawsuit as a SLAPP suit under Code of Civil Procedure section 425.16. The trial court granted the motion and dismissed the action without leave to amend, finding both that the action was a SLAPP suit and that the plaintiffs had not established a probability that they would prevail. The court later sustained without leave to amend defendants' demurrer to the Episcopal Church's complaint

in intervention and dismissed that action. The Los Angeles Diocese and the Episcopal Church appealed the dismissals. The Court of Appeal consolidated the appeals and reversed the judgments. That court ruled that the action was not a SLAPP suit subject to the special motion to strike, and that the higher church authorities, not defendants, own the disputed property.

We granted review to decide both whether this action is subject to the special motion to strike under Code of Civil Procedure section 425.16 and the merits of the church property dispute.

II. DISCUSSION

A. Special Motion to Strike Under Code of Civil Procedure Section 425.16

Before considering the merits of the property dispute, we must decide a preliminary procedural question. Subdivision (b)(1) of Code of Civil Procedure section 425.16 (section 425.16) provides: "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." Defendants filed a special motion to strike under this section — a "so-called anti-SLAPP motion." (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131.) The trial court found that section 425.16 governs the action the Los Angeles Diocese filed and, further finding the plaintiffs had not shown a probability they would prevail, granted the special motion to strike. The Court of Appeal con-

cluded that the action was not a SLAPP suit. We agree with the Court of Appeal.

"[S]ection 425.16 requires that a court engage in a two-step process when determining whether a defendant's anti-SLAPP motion should be granted. First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one 'arising from' protected activity. (§ 425.16, subd. (b)(1).) If the court finds such a showing has been made, it then must consider whether the plaintiff has demonstrated a probability of prevailing on the claim." (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 76.) Defendants argue that this action arose from their protected activity in first expressing disagreement with the higher church authorities regarding church governance and then disaffiliating from the general church.

The Los Angeles Diocese's complaint did allege facts concerning the reasons defendants decided to disaffiliate from the greater church. Nevertheless, we conclude the action did not arise from protected activity within the meaning of section 425.16. As the Court of Appeal aptly stated, "The flaw in this thinking is that it confuses the *motivation for the disaffiliation* with the claims made by the general church about the *use of church property*. [¶] . . . [I]t makes no difference *why* defendants are disaffiliating; the point is they are being sued for asserting *control over the local parish property* to the exclusion of a *right to control asserted by plaintiffs*."

"[T]he mere fact that an action was filed after protected activity took place does not mean the action arose from that activity for the purposes of the anti-SLAPP statute. [Citation.] Moreover, that a

cause of action arguably may have been 'triggered' by protected activity does not entail that it is one arising from such. [Citation.] In the anti-SLAPP context, the critical consideration is whether the cause of action is *based on* the defendant's protected free speech or petitioning activity." (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 89.) In filing this action, the Los Angeles Diocese sought to resolve a *property dispute.* The property dispute is based on the fact that both sides claim ownership of the same property. This dispute, and not any protected activity, is "the gravamen or principal thrust" of the action. (*Martinez v. Metabolife Internat., Inc.* (2003) 113 Cal.App.4th 181, 193.) The additional fact that protected activity may lurk in the background — and may explain why the rift between the parties arose in the first place — does not transform a property dispute into a SLAPP suit. Accordingly, the trial court erred in treating this as a SLAPP suit subject to section 425.16's special motion to dismiss.

B. Resolving the Dispute Over the Church Property

Both lower courts also decided the merits of the dispute over ownership of the local church — the trial court in favor of the local church and the Court of Appeal in favor of the general church. We will also decide this question, which the parties as well as various amici curiae have fully briefed. We will first consider what method the secular courts of this state should use to resolve disputes over church property. We will then apply that method to resolve the dispute of this case.

1. How California Courts Should Resolve Disputes Over Church Property

Decisions from both this court and the United States Supreme Court have made clear that, when asked to do so, secular courts may, indeed must, resolve internal church disputes over ownership of church property. As the high court put it in the seminal 19th-century case involving a church property dispute, "an appeal is made to the secular authority; the courts when so called on must perform their functions as in other cases. [¶] Religious organizations come before us in the same attitude as other voluntary associations for benevolent or charitable purposes, and their rights of property, or of contract, are equally under the protection of the law, and the actions of their members subject to its restraints." (*Watson v. Jones* (1871) 80 U.S. 679, 714.) Similarly, in its most recent decision involving a church property dispute, the court stated, "There can be little doubt about the general authority of civil courts to resolve this question. The State has an obvious and legitimate interest in the peaceful resolution of property disputes, and in providing a civil forum where the ownership of church property can be determined conclusively." (*Jones v. Wolf*, *supra*, 443 U.S. at p. 602.) (For cases from this court, see, e.g., *Rosicrucian Fellow v. Rosicrucian Etc. Ch.* (1952) 39 Cal.2d 121, 131; *Wheelock v. First Presb. Church* (1897) 119 Cal. 477, 482.)

But when called on to resolve church property disputes, secular courts must not entangle themselves in disputes over church doctrine or infringe on the right to free exercise of religion. In this regard, the United States Supreme Court has made two

points clear: (1) how state courts resolve church property disputes is a matter of state law; but (2) the method a state chooses must not violate the First Amendment to the United States Constitution.[2] "[T]he First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice. [Citations.] As a corollary to this commandment, the Amendment requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization. [Citations.] Subject to these limita-tions, however, the First Amendment does not dictate that a State must follow a particular method of resolving church property disputes. Indeed, 'a State may adopt *any* one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith.'" (*Jones v. Wolf*, *supra*, 443 U.S. at p. 602, quoting *Md. & Va. Churches v. Sharpsburg Ch.* (1970) 396 U.S. 367, 368 (conc. opn. of Brennan, J.).)

The high court found invalid, for example, a method used in Georgia whereby "the right to the property previously used by the local churches was made to turn on a civil court jury decision as to

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[2] As relevant here, the First Amendment to the United States Constitution (First Amendment) provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ." (See *Kedroff v. St. Nicholas Cathedral* (1952) 344 U.S. 94, 100, fn. 5.) Although the amendment refers solely to Congress, its restraints apply to the states through the Fourteenth Amendment. (See *Presbyterian Church v. Hull Church* (1969) 393 U.S. 440, 441.)

whether the general church abandoned or departed from the tenets of faith and practice it held at the time the local churches affiliated with it." (*Presbyterian Church v. Hull Church, supra*, 393 U.S. at p. 441.) The court held that "the civil courts [have] *no* role in determining ecclesiastical questions in the process of resolving property disputes." (*Id.* at p. 447.) It explained that the First Amendment "commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine. Hence, States, religious organizations, and individuals must structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions." (*Id.* at p. 449.) The court concluded that the "departure-from-doctrine" approach "requires the civil court to determine matters at the very core of a religion — the interpretation of particular church doctrines and the importance of those doctrines to the religion. Plainly, the First Amendment forbids civil courts from playing such a role." (*Id.* at p. 450; see also *Serbian Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696, 698 ["inquiries made by the Illinois Supreme Court into matters of ecclesiastical cognizance and polity and the court's actions pursuant thereto contravened the First and Fourteenth Amendments"].) The court remanded the matter to the Georgia Supreme Court to develop a new method for resolving church property disputes. (*Presbyterian Church v. Hull Church, supra*, at pp. 450-452.)

The high court has approved two methods for adjudicating church property disputes. The first approach is one the court itself adopted in the 19th

century. (*Watson v. Jones*, *supra*, 80 U.S. 679.)[3] This approach is often called the "principle of government" approach. (See *Watson v. Jones*, *supra*, 80 U.S. at p. 725.) The *Watson v. Jones* court distinguished between two types of church disputes. One "has reference to the case of a church of a strictly congregational or independent organization, governed solely within itself . . . ; and to property held by such a church, either by way of purchase or donation, with no other specific trust attached to it in the hands of the church than that it is for the use of that congregation as a religious society." (*Id.* at pp. 724-725.) "In such cases," the court explained, "where there is a schism which leads to a separation into distinct and conflicting bodies, the rights of such bodies to the use of the property must be determined by the ordinary principles which govern voluntary associations." (*Id.* at p. 725.) Another type, which the court said "is the one which is oftenest found in the courts," involves a hierarchical structure, i.e., a "religious congregation which is itself part of a large and general organization of some religious denomination, with which it is more or less intimately connected by religious views and ecclesiastical government." (*Id.* at p. 726.) In the latter case, the court said, "we are bound to look at the fact that the local congregation is itself but a member of a much larger and more important religious organization, and is

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[3] As the high court later explained, *Watson v. Jones*, *supra*, 80 U.S. 679, predated *Erie R. Co. v. Tompkins* (1938) 304 U.S. 64 and, accordingly, "it was based on general federal law rather than the state law of the forum in which it was brought." (*Serbian Orthodox Diocese v. Milivojevich*, *supra*, 426 U.S. at p. 710, fn. 5.)

under its government and control, and is bound by its orders and judgments." (*Id.* at pp. 726-727.)

The court adopted this test for a hierarchical church: "[W]henever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them." (*Watson v. Jones*, *supra*, 80 U.S. at p. 727; see also *Serbian Orthodox Diocese v. Milivojevich*, *supra*, 426 U.S. at p. 710 [quoting this language and describing it as the rule applicable to "hierarchical churches"].)

The second approach the high court has approved is what it called the "neutral principles of law" approach. (*Jones v. Wolf*, *supra*, 443 U.S. at p. 597.) The court first mentioned such a possible approach in *Presbyterian Church v. Hull Church*, *supra*, 393 U.S. 440: "And there are neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded." (*Id.* at p. 449.) A year later, in a brief per curiam opinion, the high court upheld Maryland's resolution of a church property dispute that "relied upon provisions of state statutory law governing the holding of property by religious corporations, upon language in the deeds conveying the properties in question to the local church corporations, upon the terms of the charters of the corporations, and upon provisions in the constitution of the General Eldership pertinent to the ownership and control of church property." (*Md. & Va. Churches v. Sharpsburg Ch.*, *supra*, 396 U.S. at p. 367, fn. omit-

ted.)[4] Because this approach "involved no inquiry into religious doctrine," the high court dismissed the appeal as one involving no substantial federal question. (396 U.S. at p. 368; see also *id.* at p. 370 (conc. opn. of Brennan, J.) [discussing the neutral principles approach in greater detail].)

The high court definitively approved the neutral principles approach in *Jones v. Wolf*, *supra*, 443 U.S. 595, a 1979 decision that is the high court's most recent on this subject and, hence, is of critical importance to the instant dispute. After that court had invalidated Georgia's method for resolving church property disputes (*Presbyterian Church v. Hull Church*, *supra*, 393 U.S. 440), Georgia adopted a new

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[4] Although the high court originally referred to "neutral principles of law, developed for use in all property disputes" (*Presbyterian Church v. Hull Church*, *supra*, 393 U.S. at p. 449), it later made clear that such neutral principles may include application of statutes specifically governing religious property. (*Md. & Va. Churches v. Sharpsburg Ch.*, *supra*, 396 U.S. at p. 367; see also *id.* at p. 370 (conc. opn. of Brennan, J.).) As the high court explained in *Jones v. Wolf*, *supra*, 443 U.S. at pages 602-603, "The neutral-principles approach was approved in [*Md. & Va. Churches v. Sharpsburg Ch.*, *supra*], an appeal from a judgment of the Court of Appeals of Maryland settling a local church property dispute on the basis of the language of the deeds, the terms of the local church charters, *the state statutes governing the holding of church property*, and the provisions in the constitution of the general church concerning the ownership and control of church property." (Italics added.)

A statute governing specifically church property obviously is not developed for use in all property disputes, but, as the high court has made clear, it may still be considered in applying neutral principles of law as that court defines the term. Such a statute is — or must be — neutral in the sense that it does not require state courts to resolve questions of religious doctrine.

approach. The high court considered that new approach in *Jones v. Wolf*, *supra*, 443 U.S. 595. It summarized the issue at the outset: "This case involves a dispute over the ownership of church property following a schism in a local church affiliated with a hierarchical church organization. The question for decision is whether civil courts, consistent with the First and Fourteenth Amendments to the Constitution, may resolve the dispute on the basis of 'neutral principles of law,' or whether they must defer to the resolution of an authoritative tribunal of the hierarchical church." (*Id.* at p. 597.)

The high court reviewed three Georgia Supreme Court opinions that postdated the remand in *Presbyterian Church v. Hull Church*, *supra*, 393 U.S. 440. It explained that after the remand, the Georgia Supreme Court "adopted what is now known as the 'neutral principles of law' method for resolving church property disputes. The [Georgia Supreme Court] examined the deeds to the properties, the state statutes dealing with implied trusts [citation], and the Book of Church Order to determine whether there was any basis for a trust in favor of the general church." (*Jones v. Wolf*, *supra*, 443 U.S. at p. 600.) In all three of the Georgia Supreme Court cases, the deeds to the disputed property were in the name of the local church. In two of them, including the case the *Jones v. Wolf* court was reviewing, no statute or church document created a trust in favor of the general church. In those cases, the Georgia Supreme Court awarded the property to the local church. (*Id.* at pp. 600-601.) In the third case, however, involving a dispute within the United Methodist Church, the high court explained that the Georgia Supreme

Court "observed, however, that the constitution of The United Methodist Church, its Book of Discipline, contained an express trust provision in favor of the general church. On this basis, the church property was awarded to the denominational church." (*Ibid.*, fn. omitted.)

The *Jones v. Wolf* court upheld Georgia's neutral principles approach, although it remanded the particular case to the Georgia Supreme Court for further proceedings on a narrow point irrelevant to the issue of this case.[5] It recognized advantages inherent in that approach. "The primary advantages of the neutral-principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity. The method relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice. Furthermore, the neutral-principles analysis shares the peculiar genius of private-law systems

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[5] The Georgia Supreme Court had also resolved a dispute over which of two local factions properly represented the local church. The high court was concerned that the Georgia Supreme Court had not adequately explained its reasoning. Specifically, the Georgia Supreme Court did not explain whether it simply applied majority rule — which the high court indicated would be permissible — or whether the decision "involve[d] considerations of religious doctrine and polity" — which the high court indicated would not be permissible. (*Jones v. Wolf*, *supra*, 443 U.S. at p. 608.) The high court remanded the matter to permit the Georgia Supreme Court to articulate the reasons it concluded one particular faction represented the local church. (*Id.* at pp. 609-610.) This case presents no such issue.

in general — flexibility in ordering private rights and obligations to reflect the intentions of the parties. Through appropriate reversionary clauses and trust provisions, religious societies can specify what is to happen to church property in the event of a particular contingency, or what religious body will determine the ownership in the event of a schism or doctrinal controversy. In this manner, a religious organization can ensure that a dispute over the ownership of church property will be resolved in accord with the desires of the members." (*Jones v. Wolf*, *supra*, 443 U.S. at pp. 603-604.)

The court also recognized potential difficulties inherent in the neutral principles approach. "The neutral-principles method, at least as it has evolved in Georgia, requires a civil court to examine certain religious documents, such as a church constitution, for language of trust in favor of the general church. In undertaking such an examination, a civil court must take special care to scrutinize the document in purely secular terms, and not to rely on religious precepts in determining whether the document indicates that the parties have intended to create a trust. In addition, there may be cases where the deed, the corporate charter, or the constitution of the general church incorporates religious concepts in the provisions relating to the ownership of property. If in such a case the interpretation of the instruments of ownership would require the civil court to resolve a religious controversy, then the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body." (*Jones v. Wolf*, *supra*, 443 U.S. at p. 604.)

Despite these potential difficulties, the high court concluded that "the promise of nonentanglement and neutrality inherent in the neutral-principles approach more than compensates for what will be occasional problems in application. These problems, in addition, should be gradually eliminated as recognition is given to the obligation of 'States, religious organizations, and individuals [to] structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions.' [Citation.] We therefore hold that a State is constitutionally entitled to adopt neutral principles of law as a means of adjudicating a church property dispute." (*Jones v. Wolf*, *supra*, 443 U.S. at p. 604, quoting *Presbyterian Church v. Hull Church*, *supra*, 393 U.S. at p. 449.)

Early cases from this court resolving church property disputes generally cited *Watson v. Jones*, *supra*, 80 U.S. 679, the only then existing United States Supreme Court decision on the subject. (See *Rosicrucian Fellow v. Rosicrucian Etc. Ch.*, *supra*, 39 Cal.2d at p. 131; *Committee of Missions v. Pacific Synod* (1909) 157 Cal. 105, 122; *Horsman v. Allen* (1900) 129 Cal. 131, 135; *Wheelock v. First Presb. Church*, *supra*, 119 Cal. at p. 485; *Baker v. Ducker* (1889) 79 Cal. 365, 374.) This court has not had occasion to consider the neutral principles approach in a church property case since its development.[6] The

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[6] In a case not involving a church property dispute, we described "the rule that the state must accept the decision of appropriate church authorities on . . . matters [of religious doctrine and internal church governance]" as "the rule of the so-called church property cases." (*Catholic Charities of Sacramento, Inc. v. Superior Court* (2004) 32 Cal.4th 527, 541.) As

Courts of Appeal have, however, adopted and consistently used it. (*Concord Christian Center v. Open Bible Standard Churches* (2005) 132 Cal.App.4th 1396, 1411; *California-Nevada Annual Conf. of the United Methodist Church v. St. Luke's United Methodist Church* (2004) 121 Cal.App.4th 754, 762-764; *Guardian Angel Polish Nat. Catholic Church of L.A., Inc. v. Grotnik* (2004) 118 Cal.App.4th 919, 930; *Singh v. Singh* (2004) 114 Cal.App.4th 1264, 1280-1281; *Korean United Presbyterian Church v. Presbytery of the Pacific* (1991) 230 Cal.App.3d 480, 497-499, 503; *Protestant Episcopal Church v. Barker*, *supra*, 115 Cal.App.4th at p. 615; *Presbytery of Riverside v. Community Church of Palm Springs* (1979) 89 Cal.App.3d 910, 919-923 (*Presbytery of Riverside*); *In re Metropolitan Baptist Church of Richmond, Inc.* (1975) 48 Cal.App.3d 850, 858-859; see also *Metropolitan Philip v. Steiger* (2000) 82 Cal.App.4th 923, 929, fn. 7 [not deciding whether the neutral principles approach is valid because the case turned on an ecclesiastical dispute requiring the court to defer to the ecclesiastical authorities].)

The Court of Appeal in this case criticized these Court of Appeal decisions for, in its view, violating principles of stare decisis. The Court of Appeal believed that early cases of this court specifically adopted the principle of government approach, thus precluding the more recent Courts of Appeal from

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Jones v. Wolf, *supra*, 443 U.S. 595, makes clear, this rule does indeed apply to church property cases even under the neutral principles approach. Because no church property dispute existed in *Catholic Charities of Sacramento, Inc. v. Superior Court*, we did not consider whether neutral principles of law can be used to resolve such disputes.

adopting the neutral principles approach. We disagree. As explained in the Court of Appeal opinion containing the most thorough examination of this question (*Presbytery of Riverside, supra,* 89 Cal.App.3d 910), the principle of government method of *Watson v. Jones, supra,* 80 U.S. 679, and the neutral principles method of *Jones v. Wolf, supra,* 443 U.S. 595, are not mutually exclusive, but can be reconciled.[7] In any event, this court unquestionably has authority to adopt the neutral principles approach.

Watson v. Jones, supra, 80 U.S. at page 727, held that secular courts must accept as binding any church adjudication regarding "questions of discipline, or of faith, or ecclesiastical rule, custom, or law . . . ." As *Jones v. Wolf, supra,* 443 U.S. 595, makes clear, this remains the rule. Secular courts may not decide questions involving church doctrine or faith. But this rule does not prevent courts from using neutral principles of law to resolve a church property dispute that does not turn on questions of church doctrine: "However, when the dispute to be resolved is essentially ownership or right to possession of property, the civil courts appropriately adjudicate the controversy even though it may arise out of a dispute over doctrine or other ecclesiastical question, provided the court can resolve the property dispute without attempting to resolve the underlying ecclesiastical controversy." (*Presbytery of Riverside,*

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[7] The opinion of *Presbytery of Riverside, supra,* 89 Cal.App.3d 910, actually predated *Jones v. Wolf, supra,* 443 U.S. 595, by a few months, but it considered the discussion of "neutral principles of law" found in *Presbyterian Church v. Hull Church, supra,* 393 U.S. 440. (*Presbytery of Riverside, supra,* at pp. 920-924 & fn. 2.)

supra, 89 Cal.App.3d at p. 920.) As the *Presbytery of Riverside* court explained, "[i]n *Watson v. Jones* the court was asked to decree the termination of an implied trust because of alleged departures from doctrine by the general church. (See *Presbyterian Church v. Hull Church*, *supra*, 393 U.S. at p. 445.) Thus the dispute involved in the case was purely ecclesiastical." (*Id.* at p. 921.)

The *Presbytery of Riverside* court also discussed early decisions of this court and concluded that, although they cited and applied the rule of *Watson v. Jones*, *supra*, 80 U.S. 679, they do not preclude use of neutral principles of law to decide church property disputes that do not turn on questions of church doctrine. (*Presbytery of Riverside*, *supra*, 89 Cal.App.3d at pp. 922-923.) As did the court in *Protestant Episcopal Church v. Barker*, *supra*, 115 Cal.App.3d at page 614 (and implicitly the more recent Court of Appeal decisions using the neutral principles approach), we find the discussion in *Presbytery of Riverside*, *supra*, 89 Cal.App.3d 910, persuasive. Subject to the proviso that secular courts may not decide questions of church doctrine, we believe that California courts should use neutral principles of law to decide church property disputes.

Accordingly, we conclude that secular courts called on to resolve church property disputes should proceed as follows: State courts must not decide questions of religious doctrine; those are for the church to resolve. Accordingly, if resolution of a property dispute involves a point of doctrine, the court must defer to the position of the highest ecclesiastical authority that has decided the point. But to the extent the court can resolve a property dispute

without reference to church doctrine, it should apply neutral principles of law. The court should consider sources such as the deeds to the property in dispute, the local church's articles of incorporation, the general church's constitution, canons, and rules, and relevant statutes, including statutes specifically concerning religious property, such as Corporations Code section 9142. (See *Jones v. Wolf*, *supra*, 443 U.S. at p. 600 [upholding Georgia's use of such sources]; *Md. & Va. Churches v. Sharpsburg Ch.*, *supra*, 396 U.S. 367 [upholding Maryland's use of such sources]; *Protestant Episcopal Church v. Barker*, *supra*, 115 Cal.App.3d at p. 621.)

2. Resolving the Dispute of This Case

St. James Parish holds record title to the property in question. That is the fact that defendants rely on most heavily in claiming ownership. On the other hand, from the beginning of its existence, St. James Parish promised to be bound by the constitution and canons of the Episcopal Church. Such commitment is found in the original application to the higher church authorities to organize as a parish and in the articles of incorporation. Canon I.7.4, adopted in 1979, provides that property held by a local parish "is held in trust" for the general church and the diocese in which the local church is located. The same canon states that the trust does not limit the authority of the parish over the property "so long as the particular Parish . . . remains a part of, and subject to, this Church and its Constitution and Canons." Other canons adopted long before St. James Parish existed also contained substantial restrictions on the local use of church property.

The question before us is, which prevails — the fact that St. James Parish holds record title to the property, or the facts that it is bound by the constitution and canons of the Episcopal Church and the canons impress a trust in favor of the general church? In deciding this question, we are not entirely free from constitutional constraints. Once again, *Jones v. Wolf, supra*, 443 U.S. 595, is important to this question. Although that decision permitted the states to use the neutral principles approach, it also made clear that in applying that approach, state courts must neither become entangled in religious matters nor, especially important to the instant dispute, violate the First Amendment right to free exercise of religion. *Jones v. Wolf* was a five-to-four decision, with the dissent arguing that the First Amendment compels use of the principle-of-government approach of *Watson v. Jones, supra*, 80 U.S. 679 — under which the higher church authorities would necessarily win. Normally, the dissent would not be of great significance to this court, because we are bound by the majority opinion concerning federal constitutional questions. But the majority responded to some of the dissent's specific arguments. The dissent is important to give context and meaning to the majority's response.

The dissent argued that "in each case involving an intrachurch dispute — including disputes over church property — the civil court must focus directly on ascertaining, and then following, the decision made within the structure of church governance. . . . [B]y recognizing the authoritative resolution reached within the religious association, the civil court avoids interfering indirectly with the religious gov-

ernance of those who have formed the association and submitted themselves to its authority." (*Jones v. Wolf, supra,* 443 U.S. at p. 618, fn. omitted (dis. opn. of Powell, J.).) The majority responded to this point, which it described as an argument "that a rule of compulsory deference is necessary in order to protect the free exercise rights 'of those who have formed the association and submitted themselves to its authority.'" (*Jones v. Wolf, supra,* at pp. 605-606.) Significantly, the majority did not deny that free exercise rights require a secular court to defer to decisions made within a religious association when local churches have submitted themselves to the authority of that association. Rather, the majority argued that the neutral principles approach is consistent with this requirement.

The dissent's argument, the *Jones v. Wolf* majority stated, "assumes that the neutral-principles method would somehow frustrate the free-exercise rights of the members of a religious association. Nothing could be further from the truth. The neutral-principles approach cannot be said to 'inhibit' the free exercise of religion, any more than do other neutral provisions of state law governing the manner in which churches own property, hire employees, or purchase goods. Under the neutral-principles approach, the outcome of a church property dispute is not foreordained. *At any time before the dispute erupts,* the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. *Alternatively, the constitution of the general church can be*

made to recite an express trust in favor of the denominational church. The burden involved in taking such steps will be minimal. *And the civil courts will be bound to give effect to the result indicated by the parties*, provided it is embodied in some legally cognizable form." (*Jones v. Wolf, supra*, 443 U.S. at p. 606, italics added.)

Shortly after this decision, and in apparent reaction to it, the Episcopal Church added Canon I.7.4, which recites an express trust in favor of the denominational church. This occurred some 25 years before the instant dispute erupted. Defendants focus on the high court's reference to what the "parties" can do, and argue that Canon I.7.4, to be effective, had to have been enacted by the parties — in other words, that some kind of agreement must have been reached between the general church and St. James Parish (and presumably every other parish in the country) ratifying Canon I.7.4. We do not so read the high court's words. Use of the passive voice in describing the possible "alternative[]" of making the general church's constitution recite the trust suggests the high court intended that this could be done by whatever method the church structure contemplated. Requiring a particular method to change a church's constitution — such as requiring every parish in the country to ratify the change — *would* infringe on the free exercise rights of religious associations to govern themselves as they see fit. It would impose a major, not a "minimal," burden on the church governance. (*Jones v. Wolf, supra*, 443 U.S. at p. 606.)

Thus, the high court's discussion in *Jones v. Wolf, supra*, 443 U.S. at page 606, together with the Epis-

copal Church's adoption of Canon I.7.4 in response, strongly supports the conclusion that, once defendants left the general church, the property reverted to the general church. Moreover, Canon I.7.4 is consistent with earlier-enacted canons that, although not using the word "trust," impose substantial limitations on the local parish's use of church property and give the higher church authorities substantial authority over that property. For example, permitting a disaffiliating local church to take the property with it when it reaffiliates with a different church is inconsistent with the prohibition of Canon II.6, section 2, against encumbering or alienating local property without the previous consent of higher church authorities. Thus, a strong argument exists that Canon I.7.4 merely codified what had long been implicit. As we discuss below, this is the conclusion reached by some of the out-of-state decisions that awarded property to the national Episcopal Church in similar disputes.

A California statutory provision that was enacted shortly after *Jones v. Wolf*, *supra*, 443 U.S. 595, and that is consistent with the language quoted above from page 606 of that decision, also supports the conclusion that the property now belongs to the general church. As relevant, subdivisions (c) and (d) of Corporations Code section 9142 (section 9142), which were enacted in 1982 (Stats. 1982, ch. 242, § 1, p. 784), provide:

"(c) No assets of a religious corporation are or shall be deemed to be impressed with any trust, express or implied, statutory or at common law unless *one* of the following applies: [¶] . . .

"(2) Unless, and only to the extent that, the articles or bylaws of the corporation, *or the governing instruments of a superior religious body or general church of which the corporation is a member, so expressly provide.* [¶] . . .

"(d) Trusts created by paragraph (2) of subdivision (c) may be amended or dissolved by amendment from time to time to the articles, bylaws, or governing instruments *creating the trusts. . . .*" (Italics added.)

This statute appears to be the type of statute the United States Supreme Court had in mind when it approved reliance on "provisions of state statutory law governing the holding of property by religious corporations . . . ." (*Md. & Va. Churches v. Sharpsburg Ch.*, *supra*, 396 U.S. at p. 367, fn. omitted.) Justice Brennan fleshed out the point in his concurring opinion in that case. He explained that one possible approach to resolving church property disputes "is the passage of special statutes governing church property arrangements in a manner that precludes state interference in doctrine. Such statutes must be carefully drawn to leave control of ecclesiastical polity, as well as doctrine, to church governing bodies." (*Id.* at p. 370 (conc. opn. of Brennan, J.).) Section 9142, subdivisions (c) and (d), does not permit state interference in religious doctrine and leaves control of ecclesiastical policy and doctrine to the church. Subdivision (c) of that section permits the governing instruments of the general church to create an express trust in church property, which Canon I.7.4 does. Subdivision (d) permits changing a trust, but only if done in the instrument that *created* it. Canon I.7.4 has not been amended. So it would appear that

this statute also compels the conclusion that the general church owns the property now that defendants have left the general church.

Defendants argue that section 9142 states only a negative conditional, not a positive imperative. In other words, in their view, the statutory provisions are *minimum* requirements for impression of a trust on local religious property, and do not necessarily exclude other requirements therefor. Defendants focus on the grammatical construction of subdivision (c), and its repeated use of the word "unless." As defendants would have it, there is *never* a trust "unless" one of the statutory provisions is present, but this does not mean there is *always* a trust when one or more of the provisions *is* present. But this interpretation overlooks subdivision (d) of section 9142. That subdivision provides that "[t]rusts *created by* paragraph (2) of subdivision (c) may be amended or dissolved by amendment from time to time to the articles, bylaws, or governing instruments *creating the trusts*. . . ." (Italics added.) Thus, subdivision (d) appears clearly to indicate that, under California law, a trust *is created* by compliance with any one of the alternatives set forth in subdivision (c)(2), and it can only be altered or dissolved by amending the creating instrument.

In short, St. James Parish agreed from the beginning of its existence to be part of a greater denominational church and to be bound by that greater church's governing instruments. Those instruments make clear that a local parish owns local church property in trust for the greater church and may use that property only so long as the local church remains part of the greater church. Respect for the

First Amendment free exercise rights of persons to enter into a religious association of their choice, as delineated in *Jones v. Wolf*, *supra*, 443 U.S. 595 (as well as the provisions of section 9142) requires civil courts to give effect to the provisions and agreements of that religious association. To adapt a similar conclusion in a recent Court of Appeal decision involving a different religious association, "In summary, [St. James Parish] is bound by the constitution, laws, rules and regulations of the [Episcopal Church]. Historically, it has accepted the authority of the national church and submitted itself to the national church's jurisdiction." (*Guardian Angel Polish Nat. Catholic Church of L.A., Inc. v. Grotnik*, *supra*, 118 Cal.App.4th at p. 929; see also *Korean United Presbyterian Church v. Presbytery of the Pacific*, *supra*, 230 Cal.App.3d 480 [reaching a similar conclusion regarding a different religious association based in part on section 9142 and a general church's constitutional provision comparable to Canon I.7.4].)

This conclusion is bolstered by a review of out-of-state cases that involved similar church property disputes within the Episcopal Church and that, with near unanimity, awarded the disputed property to the general church when a local church disaffiliated itself from that general church. A typical case, and one cited in some of the later cases, is *Rector, Wardens v. Episcopal Church* (Conn. 1993) 620 A.2d 1280. In that case, the court reviewed the history of the Episcopal Church. It concluded that a local church that had withdrawn from the general Episcopal Church, as well as the local church's predecessors, "had agreed, as a condition to their formation as ecclesiastical organizations affiliated with the

Diocese and [the Episcopal Church], to use and hold their property only for the greater purposes of the church." (*Id.* at p. 1292.) Specifically, it found that Canon I.7.4 (which it called the "Dennis Canon"), "adopted in 1979 merely codified in explicit terms a trust relationship that has been implicit in the relationship between local parishes and dioceses since the founding of [the Episcopal Church] in 1789." (*Ibid.*) Accordingly, it found "a legally enforceable trust in favor of the general church in the property claimed by the [local church]." (*Id.* at p. 1293.)

Other Episcopal Church cases reaching similar conclusions include *Bishop and Diocese of Colorado v. Mote* (Colo. 1986) 716 P.2d 85; *Episcopal Diocese of Mass. v. Devine* (Mass.App.Ct. 2003) 797 N.E.2d 916 (relying on Canon I.7.4 and the fact the local church had agreed to accede to the general church's canons); *Bennison v. Sharp* (Mich.Ct.App. 1983) 329 N.W.2d 466; *Protestant Episc. Church, etc. v. Graves* (N.J. 1980) 417 A.2d 19; *The Diocese v. Trinity Epis. Church* (App.Div. 1999) 684 N.Y.S.2d 76, 81 ("[T]he 'Dennis Canon' amendment expressly codifies a trust relationship which has implicitly existed between the local parishes and their dioceses throughout the history of the Protestant Episcopal Church," citing *Rector, Wardens v. Episcopal Church, supra*, 620 A.2d 1280); *Daniel v. Wray* (N.C.Ct.App. 2003) 580 S.E.2d 711 (relying on Canon I.7.4); *In re Church of St. James the Less* (Pa. 2005) 888 A.2d 795 (relying on Canon I.7.4 and citing *Rector, Wardens v. Episcopal Church, supra*, 620 A.2d 1280). The court in *Bjorkman v. Protestant Episcopal Church* (Ky. 1988) 759 S.W.2d 583 awarded the property to the local church, but there the dispute arose before the high

court decision of *Jones v. Wolf, supra*, 443 U.S. 595, the opinion did not mention Canon I.7.4, and the decision has not been followed by other jurisdictions. These out-of-state decisions are not binding on this court, but we find them persuasive, especially in the aggregate.

Defendants rely in part on *Protestant Episcopal Church v. Barker, supra*, 115 Cal.App.3d 599, the only reported California case involving a property dispute within the Episcopal Church. In that case, four local churches in Los Angeles disaffiliated from the general Episcopal Church. The Court of Appeal, over a dissent, awarded the disputed property to three of the local churches and to the general church regarding the fourth local church. The factual difference that caused the different results was that the three churches were incorporated before, and the fourth after, a particular canon of the Los Angeles Diocese was adopted. The dissent would have awarded all of the disputed property to the general church. We need not decide whether the majority decision was correct based on the specific record before it and the state of the law at the time, for it is distinguishable, largely due to the passage of time. In that case, the dispute arose and, indeed, the trial court judgment was rendered before (1) the decision in *Jones v. Wolf, supra*, 443 U.S. 595, (2) the Episcopal Church adopted Canon I.7.4, and (3) the Legislature enacted section 9142, subdivisions (c) and (d). The appellate court in *Barker* did not mention any of the general church's canons. Accordingly, that decision does not control a dispute that, here, arose 25 years after the high court decision and the adoption of Canon I.7.4. We note that several of the out-of-

state cases discussed above cite, but do not follow, *Protestant Episcopal Church v. Barker*, *supra*, 115 Cal.App.3d 599.[8]

Defendants also cite *California-Nevada Annual Conf. of the United Methodist Church v. St. Luke's United Methodist Church*, *supra*, 121 Cal.App.4th 754 (*St. Luke's*), which interpreted section 9142. The court in that case concluded that there had been a trust in favor of the general church, but that the deeds to the local property and the local church's articles of incorporation, not the general church's governing instruments, created the trust. (See *St. Luke's*, *supra*, at p. 770 ["The Book of Discipline [i.e., the general church's governing instrument] did not, by itself, 'create' the trust."].) Accordingly, it concluded that the local church could, and did, revoke the trust. (*Id.* at p. 771.) We need not decide whether *St. Luke's* was correct on its facts because, assuming its conclusion was factually correct, the decision is distinguishable. Here, the general church's canons, not instruments of the local church, created the trust. The language of section 9142, subdivision (d), requires any revocation of that trust to exist in the document that created it. So, assuming the local church in *St. Luke's* may have been able to revoke the trust of that case, nothing in section 9142 or the governing instruments of the Episcopal

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[8] See *Bishop and Diocese of Colorado v. Mote*, *supra*, 716 P.2d at pages 108-109; *id.*, footnote 17 ("[W]e find the holding in *Barker* inapplicable and decline to follow it"); *Rector, Wardens v. Episcopal Church*, *supra*, 620 A.2d at page 1285 ("declin[ing] to follow" *Barker*); *Episcopal Diocese of Mass. v. Devine*, *supra*, 797 N.E.2d at page 924, footnote 21; *Bennison v. Sharp*, *supra*, 329 N.W.2d at pages 473-474.

Church suggests that defendants may do so in this case.

The *St. Luke's* court also stated that "subdivision (c)(2) of Corporations Code section 9142 does not authorize a general church to create a trust interest for itself in property owned by a local church simply by issuing a rule declaring that such a trust exists . . . ." (*St. Luke's*, *supra*, 121 Cal.App.4th 754, 757.) As a general proposition, this statement is inconsistent with section 9142, subdivision (c)(2)'s plain language, and we disapprove it. Instead, we agree with the assessment of the Court of Appeal in this case: "[I]n a hierarchically organized church, the 'general church' *can* impress a trust on a local religious corporation of which the local corporation is a 'member' *if* the governing instruments of that superior religious body so provide."

Defendants argue that such a reading of section 9142 "would unconstitutionally promote and establish denominational religion." We need not, indeed, cannot consider all possible applications of section 9142, but as applied here, the section is fully consistent with *Jones v. Wolf*, *supra*, 443 U.S. at page 606, and promotes the free exercise rights of persons to form and join a religious association that is constructed and governed as they choose. Defendants also suggest that the Episcopal Church did not properly adopt Canon I.7.4 under its own rules. It is a bit late to argue that Canon I.7.4 was not effectively adopted, a quarter of a century later, and, in light of the consistent conclusions of the out-of-state cases that that canon is, indeed, part of the Episcopal Church's governing documents, the argument seems dubious at best. But, in any event, this is one of

those questions regarding "religious doctrine or polity" (or, as we phrased it in *Catholic Charities of Sacramento, Inc. v. Superior Court*, *supra*, 32 Cal.4th at page 541, "religious doctrine and internal church governance") on which we must defer to the greater church's resolution. (*Jones v. Wolf*, *supra*, 443 U.S. at p. 602.) Over the years, the Episcopal Church has consistently taken the position that Canon I.7.4 was effectively adopted.

Defendants also rely on Evidence Code section 662, which provides, "The owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof." We need not decide how or whether this statute interacts with the more specific section 9412 (or the First Amendment constraints that exist in this case), because, as the Court of Appeal noted, "particularly when read in conjunction with section 9142, canon I.7.4 *is* clear and convincing evidence rebutting any presumption that the beneficial interest in the local church property is solely controlled by the local parish corporation."

Defendants state that, over the years, St. James Parish "purchased additional parcels of property in its own name, with funds donated exclusively by its members." They contend that it would be unjust and contrary to the intent of the members who, they argue, "acquired, built, improved, maintained, repaired, cared for and used the real and personal property at issue for over fifty years," to cause the local parish to "los[e] its property simply because it has changed its *spiritual* affiliation." But the matter is not so clear. We may assume that St. James Par-

ish's members did what defendants say they did for all this time. But they did it for a local church that was a constituent member of a greater church and that promised to remain so. Did they act over the years intending to contribute to a church that was part of the *Episcopal Church* or to contribute to St. James Parish even if it later joined a different church? It is impossible to say for sure. Probably different contributors over the years would have had different answers if they had thought about it and were asked. The only intent a secular court can effectively discern is that expressed in legally cognizable documents. In this case, those documents show that the local church agreed and intended to be part of a larger entity and to be bound by the rules and governing documents of that greater entity.

For these reasons, we agree with the Court of Appeal's conclusion (although not with all of its reasoning) that when defendants disaffiliated from the Episcopal Church, the local church property reverted to the general church. As stated in one of the out-of-state cases involving the same Episcopal Church, "[t]he individual defendants are free to disassociate themselves from [the parish and the Episcopal Church] and to affiliate themselves with another religious denomination. No court can interfere with or control such an exercise of conscience. The problem lies in defendants' efforts to take the church property with them. This they may not do." (*Protestant Episc. Church, etc. v. Graves*, *supra*, 417 A.2d at p. 25.)

III. CONCLUSION

We affirm the judgment of the Court of Appeal.

CHIN, J.

WE CONCUR:

GEORGE, C.J.
BAXTER, J.
WERDEGAR, J.
MORENO, J.
CORRIGAN, J.

CONCURRING AND DISSENTING OPINION BY KENNARD, J.

I agree with the majority that the Protestant Episcopal Church in the United States of America (Episcopal Church) owns the property to which St. James Parish in Newport Beach (St. James Parish) has held title since 1950. This conclusion is compelled by Corporations Code section 9142, subdivision (c)(2). But I disagree with the majority that this provision, which applies only to religious corporations, reflects a "neutral principles of law" approach.

I

St. James Parish began in 1947 as a mission of the Episcopal Church. In 1949, it incorporated and became a parish of the Episcopal Church. Since 1950, the parish has held the deed to the property on which the parish's church building stands. Ownership of the property is at issue here.

In 1979, the Episcopal Church added section 4 to its Canon I.7 to provide that all property held by any of its parishes is held in trust for the Episcopal Church. In 2004, St. James Parish ended its affiliation with the Episcopal Church, and it amended its articles of incorporation to delete any reference to the Episcopal Church.

Thereafter, the Episcopal Church, its Los Angeles Diocese, and a congregation member who voted against the decision of the parish to disaffiliate brought these actions, asserting that the property at issue was being held in trust for the Episcopal Church. The trial court ruled for St. James Parish; the Court of Appeal reversed. This court granted review.

II

The First Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment (*Cantwell v. Connecticut* (1940) 310 U.S. 296, 303-304), states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ." Because of the risks of inhibiting the free development of religion and entangling secular interests in ecclesiastical concerns, the "First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes." (*Presbyterian Church v. Hull Church* (1969) 393 U.S. 440, 449.) In this regard, the United States Supreme Court has identified two constitutionally permissible approaches that civil courts may use when called upon to resolve disputes relating to church property.

One is the "principle of government" approach: When the dispute involves a hierarchical church, as here the Episcopal Church, civil courts must accept decisions made at the highest level of the church hierarchy. (*Watson v. Jones* (1871) 80 U.S. 679, 727.)

The other is the "neutral principles of law" approach. That concept, as used in the context of a civil court's resolution of church property disputes, simply permits application of "objective, well-established concepts of trust and property law familiar to lawyers and judges." (*Jones v. Wolf* (1979) 443 U.S. 595, 603.) These are "principles or rules of law 'developed for use in all property disputes' whether or not the litigants are religious associations or corporations." (*Presbytery of Riverside v. Community Church of Palm Springs* (1979) 89 Cal.App.3d 910, 923, fn. 2.)

The United States Supreme Court has left it to the states to decide which approach to adopt. (*Jones v. Wolf, supra,* 443 U.S. at p. 602.)

In 1982, the California Legislature amended Corporations Code section 9142 by adding, as relevant here, subdivision (c)(2). That provision permits the assets of a religious corporation to be made subject to a trust when "the articles or bylaws of the corporation, or the governing instruments of a superior religious body or general church of which the corporation is a member, so expressly provide." Thus, as the majority notes (maj. opn., *ante,* at pp. 23-24), through legislative fiat a "superior religious body or general church" may *unilaterally* create trusts in its favor over property held by the smaller church that was a member of the general church when the trust was created. That occurred here when in 1979 the Episcopal Church added section 4 to its Canon I.7 to unilaterally provide that all property held by any parish is held in trust for the Episcopal Church.

Applying California's statute in resolving church property disputes, the majority concludes that the Episcopal Church now is the owner of the St. James Parish property in question. I agree.

But that conclusion is not based on neutral principles of law.[1] No principle of trust law exists that

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[1] In footnote 4, page 13, the majority asserts that neutral principles of law "include application of statutes specifically governing religious property." I disagree. In the United States Supreme Court's usage, neutral principles of law refer to laws that apply in the same way regardless of whether property is church property. (*Jones v. Wolf, supra,* 443 U.S. at p. 603 [The neutral-principles approach "relies exclusively on objective,

would allow the unilateral creation of a trust by the declaration of a nonowner of property that the owner of the property is holding it in trust for the nonowner. (*California-Nevada Annual Conf. of the United Methodist Church v. St. Luke's United Methodist Church* (2004) 121 Cal.App.4th 754, 769.) If a neutral principle of law approach were applied here, the Episcopal Church might well lose because the 1950 deed to the disputed property is in the name of St. James Parish,[2] and the Episcopal Church's 1979 declaration that the parish was holding the property in trust for the Episcopal Church is of no legal consequence.

But under the principle of government approach, the Episcopal Church wins because that method makes the decision of the highest authority of a hierarchical church, here the Episcopal Church, binding on a civil court. This result is constitutional, but only because the dispute involves religious bodies and then only because the principle of government approach, permissible under the First Amendment, allows a state to give unbridled deference to the superior religious body or general church.

In my view, Corporations Code section 9142 reflects the principle of government approach. That statute allows a hierarchical church, such as the Episcopal Church here, through its bylaws to unilaterally impose a trust on the property of a local member parish. The statute does not state a neutral

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well-established concepts of trust and property law familiar to lawyers and judges"].)

[2] "The owner of the legal title to property is presumed to be the owner of the full beneficial title." (Evid. Code, § 662.)

principle of law; rather, it creates a special principle applicable solely to religious corporations.

KENNARD, J.

APPENDIX B
COURT OF APPEALS DECISION

Filed 6/25/07

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

EPISCOPAL CHURCH CASES	)	G036096, G036408 and G036868 (JCCP No. 4392) OPINION

Appeals from judgments of the Superior Court of Orange County, David C. Velasquez, Judge. Both judgments reversed.

Holme Roberts & Owen, John R. Shiner, Brent E. Rychener; Horvitz & Levy, Frederic Cohen and Jeremy Rosen for Plaintiffs and Appellants.

Goodwin Procter, David Booth Beers, Heather H. Anderson and Matthew J. Wilshire for Intervener and Appellant.

Payne & Fears, Eric C. Sohlgren, Benjamin A. Nix and Daniel F. Lula for Defendants and Respondents.

Law Offices of George S. Burns, George S. Burns and John C. Ashby as Amici Curiae for the Presbyterian Church (U.S.A.), The Synod of Southern California and Hawaii, and Presbytery of Hanmi on behalf of Plaintiffs and Appellants.

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I. SUMMARY

This appeal stems from a classic dispute over church property where a local congregation of a general church seeks to disaffiliate itself from that general church and take the local church property with it. (See generally *Baker v. Ducker* (1889) 79 Cal. 365 (*Baker*); *N. L. Wheelock v. First Presbyterian Church of Los Angeles* (1897) 119 Cal. 477 (*Wheelock*); *Horsman v. Allen* (1900) 129 Cal. 131 (*Horsman*); *Committee of Missions v. Pacific Synod* (1909) 157 Cal. 105 (*Committee of Missions*); see also *Rosicrucian Fellowship v. Rosicrucian Fellowship Nonsectarian Church* (1952) 39 Cal.2d 121 (*Rosicrucian Fellowship*); *Providence Baptist Church v. Superior Court* (1952) 40 Cal.2d 55 (*Providence Baptist*).)

But this appeal is about more than a church property dispute. It is also about the rule of stare decisis. As we shall explain below, in no less than six California Supreme Court opinions, our state's highest court, taking its cue from the United States Supreme Court decision in *Watson v. Jones* (1871) 80 U.S. 679 (*Watson*), consistently used a "principle of government" or "highest church judicatory" approach to resolve disputes over church property, an approach it applied to hierarchically organized

churches and non-hierarchically organized churches alike.

However, in 1979, a panel of the intermediate California Court of Appeal came to the belief that this line of consistent California Supreme Court cases should be ignored, and that a new approach, called "neutral-principles analysis" was the appropriate California common law approach to church property disputes. (*Presbytery of Riverside v. Community Church of Palm Springs* (1979) 89 Cal.App.3d 910 (*Church of Palm Springs*). Neutral principles is a four-factor analysis for use in church property disputes, that typically examines (1) title, (2) articles of incorporation, (3) a church's constitution, canons and rules, and (4) state statutes.

The *Church of Palm Springs* court came to its conclusion based on its reading of a quartet of United States Supreme Court cases decided in the previous decade. (See *Presbyterian Church* v. *Hull Church* (1969) 393 U.S. 440 (*Hull Church*); *Eldership v. Church of God at Sharpsburg* (1970) 396 U.S. 367 (*Eldership*); *Serbian Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696 (*Serbian Orthodox*); and *Jones v. Wolf* (1979) 443 U.S. 595 (*Jones*).

In this opinion we shall explain in detail why those federal high court opinions did *not overrule* (either expressly or impliedly), or even alter in any way, the existing common law approach used by the California Supreme Court in *Baker*, *Wheelock*, *Horsman*, *Committee of Missions*, *Rosicrucian Fellowship*, or *Providence Baptist*. In this opinion we shall refer to these cases collectively as the "*Baker-Wheelock* line."

Another panel of California's intermediate appellate court followed *Church of Palm Springs* in the case of *Protestant Episcopal Church in the Diocese of Los Angeles v. Barker* (1981) 115 Cal.App.3d 599 (*Barker*). The *Barker* court, however, did not independently examine the United States Supreme Court authorities which the *Church of Palm Springs* court had cited as authority to ignore the *Baker-Wheelock* line, or the *Church of Palm Springs'* reading of the California Supreme Court cases, particularly *Wheelock*. The *Barker* court simply assumed that the *Church of Palm Springs* decision had been correct in upsetting the stable legal universe that existed in California up until that time in the name of "neutral principles."

Thereafter, California intermediate appellate courts have given lip service to "neutral principles," but have come to results that are sometimes difficult, if not impossible, to reconcile with each other. In *Korean United Presbyterian Church v. Presbytery of the Pacific* (1991) 230 Cal.App.3d 480 (*Korean United*)[1] and *Guardian Angel Polish National Catholic Church v. Grotnik* (2004) 118 Cal.App.4th 919 (*Guardian Angel*) the Court of Appeal applied the "neutral principles" approach to reach a result identical with what the traditional "principle of government" approach would have required, i.e., upholding the property claim of a general church. On the other

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[1] *Korean United* was overruled on another point in *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 743, footnote 11. The point on which it was overruled is consideration by an appellate court of an appeal from severed issues without a final judgment, a subject that has nothing to do with religious property disputes.

hand, in *California-Nevada Annual Conf. of the United Methodist Church v. St. Luke's United Methodist Church* (2004) 121 Cal.App.4th 754 (*California-Nevada*), the court reached an opposite result (and also acknowledged that it could not be reconciled with *Guardian Angel*).

This case is also about statutory construction. In 1982, that is -- after the consistent *Baker-Wheelock* line and after *Church of Palm Springs* and *Barker* -- the Legislature, by passing Senate Bill 1178 (1981-1982 Reg. Sess.), added subdivisions (c) and (d) to Corporations Code section 9142[2] involving trusts on property held by religious corporations.

An examination of the history of Senate Bill 1178 shows that the Legislature had no intention of overturning or even changing the *Baker-Wheelock* line, or codifying *Barker* or *Church of Palm Springs*, as the *California-Nevada* court would later surmise. Rather, the expressed intent of the Legislature was to "fill a void" (the phrase consistently found in the legislative history) created by earlier legislation, Senate Bill 1493 (1979-1980 Reg. Sess.) in 1981, which, while it had stripped the California Attorney General of the ability to enforce trusts against religious corporations, left no one else with the ability to enforce such trusts.

In fact, an examination of the plain language of (then newly-added) subdivisions (c) and (d) to section 9142 shows a *consistency* with the *Baker-Wheelock* line, as long as (to use the statutory phrases) a "general church" has a "governing instrument" that "ex-

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[2] All references in this opinion to section 9142 will be to the Corporations Code.

pressly" provides for a trust against the property of a local church corporation which is a "member" of that general church.

Since, in the case before us, the general church *does* have a governing instrument so providing an express trust on the property of local parish corporations who are members of the general church, we are, in this opinion, spared the issue of any arguable conflict between the *Baker-Wheelock* line and the statute. (This issue might arise in a case where, say, a hierarchically organized church did not have a governing instrument "expressly" declaring a trust, but where it asserted such a trust some other way). In this case, the common law rule of the former and the plain language of the latter dovetail to require the same result.

And finally, this case is about anti-SLAPP motions.[3] In procedural terms, part of this appeal arises out of a dismissal, pursuant to an anti-SLAPP motion, of a lawsuit brought by the diocese of a general church against a disaffiliating local church corporation that had been a member of the general church. It is now well-established in California that anti-SLAPP motions are tested by a two-prong process, in which the court must first look at (1) whether the motion even qualifies for anti-SLAPP treatment, and (2) the merits. Readers by this point will have already grasped that the trial court erred as to (2). But we also explain that it erred as to (1) as well.

In a word, the lawsuit brought by the plaintiff general church is a property dispute -- basically over

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[3] See section 425.16 of the Code of Civil Procedure. SLAPP is an acronym for Strategic Lawsuit Against Public Participation.

who controls a particular church building in Newport Beach -- and does not arise out of some desire on the part of the general church to litigate the free exercise rights of the local congregation. They are free to disaffiliate just so long as they do not try to take the parish property with them. Readers will look in vain in this opinion for any indication of what religious controversy may have prompted the disaffiliation. We may easily reach the merits of the case under both the "principle of government" standard of the *Baker-Wheelock* line, and the plain language of section 9142, without ever needing to mention the reason for the defendants' disaffiliation. That controversy is irrelevant to this action.

II. FACTS AND BACKGROUND

St. James Parish in Newport Beach began as a "mission" of the Episcopal Church in 1947. In requesting permission to upgrade the parish's status from a "mission" to a full-fledged church, the founding members promised to be bound under the "Ecclesiastical authority of the Bishop of Los Angeles, and his successors in office, the Constitution and Canons of the Church now known as the Protestant Episcopal Church in the United States of America."

As a full-fledged church, it was incorporated in 1949. The articles of incorporation expressed this purpose: "To establish and maintain a Parish which shall form a constituent part of the Diocese of Los Angeles in that branch of the Holy Catholic Church now known as the Protestant Episcopal Church in the United States of America."

Under the canons of the Los Angeles Diocese of the Episcopal Church, each parish elects a board of

directors known as the "vestry" for the local corporation.

In 1958, the canons of the Los Angeles Diocese also provided that all property held by each parish would revert back to the Diocese upon dissolution of the parish.

In 1979, the Episcopal Church enacted Canon I.7(4), which provides that "All real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof in which such Parish, Mission or Congregation is located."

In 2004, the board of St. James Parish voted to cease all affiliation with the Episcopal Church. They amended the articles of incorporation to delete all references to the Episcopal Church. A majority of the congregation voted to support the decision, but a minority of 12 members voted against it. The Los Angeles Diocese appointed a new rector and requested that the board surrender the parish property. The board refused.

The Bishop of the Los Angeles Diocese, together with at least one of the 12 members voting against disaffiliation (Rasmussen), then filed this lawsuit in Orange County Superior Court against the rector leading the disaffiliation (Bunyan) and members of the board, alleging eight property-recovery-related causes of action. Also, the national Episcopal Church successfully sought leave to intervene in the case, and filed its own complaint in intervention.

To be sure, the original and first amended complaint and complaint in intervention in this case have included a great deal of what in story writing is known as "local color," that might make the case

seem as if it arose from a particular theological controversy. However, one could blue pencil all of that background detail out of the complaints and they would still stand on their own: The Diocese claims that the property is held in trust for *it*, the national church supports the claim, and the local church rejects it.

After a first-amended complaint the defendants soon brought an anti-SLAPP motion to dismiss the case, which was granted. In the wake of the successful anti-SLAPP motion brought against the diocese's action, the court also sustained a demurrer to the national church's (by then amended) complaint in intervention. Appeals from both dismissals followed, which this court has consolidated on its own motion.

III. THE FIRST ANTI-SLAPP PRONG

It is remarkable that the diocesan complaint in this case should come to this intermediate appellate court on a dismissal from an anti-SLAPP motion, as distinct from, say, a motion for summary judgment or trial. It seems safe to say that church property disputes are not the typical anti-SLAPP case. We are thus required to deal with the propriety of treating the diocesan complaint as a SLAPP suit before we address the merits of the property dispute (which we would be required to do in any event in the context of reviewing the propriety of the sustained demurrer to the national church's complaint in intervention).

The first prong in anti-SLAPP analysis is to determine "whether the defendant has made a threshold showing that the challenged cause of action is

one arising from protected activity." (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88.)

The theory behind the local church's prosecution of an anti-SLAPP motion is that the local church is, in essence, the object of litigation (the "strategic lawsuit" part of an anti-SLAPP motion) because of its theological differences with the diocese (and by extension, the national general church). The flaw in this thinking that it confuses the *motivation for the disaffiliation* with the claims made by the general church about the *use of church property*.

As the diocese points out in its briefing, it makes no difference *why* the defendants are disaffiliating, the point is they are being sued for asserting *control over the local parish property* to the exclusion of a *right to control asserted by the plaintiffs*. The fact that a religious controversy may have prompted the dispute over the right to control the property does not mean the defendants are being sued for the "protected activity" of changing their religion.

To illustrate: Suppose a married couple owning a house as community property were to split up because the husband suddenly decided to change religions. Would the wife's ensuing petition for dissolution be a "SLAPP" suit because her claims to her community share of the house could be traced to her displeasure with her husband's new-found religion? Hardly.

Or, to use another example, (this one based on an example from the diocese's appellants' brief): What if this case had arisen because the board of the local church had wanted to sell the property to a warehouse department store and, for all we know, donate the proceeds to the general church? Surely the issue

of who actually *controlled* the parish property could still be asserted in a normal civil suit -- in our hypothetical, for example, the diocese or national church might prefer the parish property in its traditional use as distinct from the money from the sale, and still assert whatever legal or equitable rights it might have in favor of that traditional use.

Prong one is measured by whether "protected activity" is the "gravamen or principal thrust" of the complaint. (*Martinez v. Metabolife Internat., Inc.* (2003) 113 Cal.App.4th 181, 193.) This complaint could stand alone as a simple dispute over who controls certain real property, and hence does not implicate any protected activity on the part of the local church. The trial court therefore erred in concluding that the first prong was satisfied.

IV. THE SECOND ANTI-SLAPP PRONG AND THE MERITS OF THE COMPLAINT IN INTERVENTION

If the trial court had not erred on the first prong in finding that the plaintiffs' lawsuit qualified for anti-SLAPP treatment, it presumably would have stopped there and denied the motion. It would not then have proceeded to the second prong and determined that plaintiffs' lawsuit was susceptible to dismissal on the merits.

We cannot stop with prong one, however. The propriety of the sustaining of the demurrer to the national church's complaint in intervention depends solely upon the merits of the case. We now turn to the relevant authorities that govern the issue of dis-

putes over church property in California. We will examine them in chronological order.

A. *The Law, Pre-Watson*

The law prior to the 1871 decision of the United States Supreme Court in *Watson, supra*, 80 U.S. 679 is of more than academic interest in this case, because the 1969 decision of the United States Supreme Court in *Hull Church*, and the 1981 decision of the intermediate California Court of Appeal in *Barker* would both be, in part, animated by a rejection of *that* law.

To be more specific, early 1800's decisions over church property in England developed an "implied trust" theory, which is usually attributed to then Chancellor, Lord Eldon. (See Note, *Judicial Intervention in Disputes Over the Use of Church Property* (1962) 75 Harv. L. Rev. 1142, 1145-1146.) Lord Eldon's implied trust theory required the court to decide the "nature of the original institution and the standard of faith it represented." (*Id.* at p. 1146.) The idea behind Lord Eldon's implied trust theory sought to most closely approximate the disposition of the property with the original intent of the donor: "Since the identity or character of a church was, he felt, embodied in the doctrines and usages believed and practiced by its founders, to allow a body of worshippers to change its doctrine and yet retain control of its property would be tantamount to allowing a trust for the benefit of A to be diverted to B." (*Ibid.*)

Lord Eldon's implied trust theory would be later described by the *Hull Church* court as a "departure-from-doctrine" approach. (*Hull Church, supra*, 393 U.S. at p. 443, fn. 2; 449-450.)

Its flaw was pretty obvious: Given the First Amendment and the establishment clause, requiring civil courts to divine what was the "true" original doctrine of a given religion and then determine whether some development represented a departure from that true doctrine was simply untenable. Which brings us to *Watson*.

B. *Watson*

The United States Supreme Court was able to weigh in on the issue in *Watson*, a case arising out of a split in a Louisville, Kentucky, Presbyterian Church over slavery during the Civil War. Title to the property was held in the name of the trustees of the local church, and the general Presbyterian Church had recently required ministers in southern states to publicly oppose slavery. A pro-slavery minority, however, elected their own trustees and physically seized control of the property. When members of the anti-slavery faction sued, the Kentucky state court reasoned that the public anti-slavery opposition required of southern ministers was contrary to a provision in the constitution of the Presbyterian Church prohibiting intermeddling in civil affairs. The case eventually made its way to the United States Supreme Court based on diversity jurisdiction.

The court classified religious property disputes into three categories: (1) Where the property is held in express trust. (2) Where the property is held by a "religious congregation" that is "independent," owing "no fealty or obligation to any higher authority." And (3) Where the property is held by a "religious congregation or ecclesiastical body" which is a "subordinate member of some general church organiza-

tion in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete, in some supreme judicatory over the whole membership of that general organization." (*Watson, supra*, 80 U.S. at p. 722.)

The *Watson* court then articulated and applied what may accurately be called the "principle of government" or "highest judicator[y]" rule for disputes. (See *Watson, supra*, 80 U.S. at pp. 725-727.) In a passage that would be quoted numerous times later, including by the California State Supreme Court, the *Watson* court said: "In such cases where there is a schism which leads to a separation into distinct and conflicting bodies, the rights of such bodies *to the use of the property* must be determined by the ordinary principles which govern voluntary associations. If the principle of government in such cases is that the majority rules, then the numerical majority of members must control the right to the use of the property." (*Ibid.*, italics added.)

By contrast, in a hierarchically organized church such as the one involved in the case before it (the court had just enumerated the various levels of organization in the Presbyterian Church) the *Watson* court said: "In this class of cases we think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom or law have been decided by the *highest of these church judicatories to which the matter has been carried*, the legal tribunals must accept such decisions as final, and as bind-

ing on them, in their application to the case before them." (*Watson, supra*, 80 U.S. at p. 726, italics added.)

Because reference to the "highest . . . judicatories" of the church at issue in *Watson* proved the dispositive rule, the *Watson* approach is often seen as synonymous with the "hierarchy theory." (See *Barker, supra*, 115 Cal.App.3d at pp. 611-613.)

But we hasten to add that the "hierarchy" description is a technical misnomer. As the passage just quoted about majority rule shows, *Watson's* "principle of government" is in point of fact neutral toward any kind of church organization. It simply makes the decision turn upon the structure of governmental organization in a church, as distinct from some other criterion.

The *Watson* court also made very clear that its "highest judicator[y]" approach was "otherwise" from Lord Eldon's implied trust approach. (*Watson, supra*, 80 U.S. at p. 727.) But that was to be expected given the First Amendment. The court said in America people are free to "organize voluntary religious associations" and "It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for." (*Id.* at pp. 727-729.)

At the time of the *Watson* decision, the federal First Amendment had not been made binding on the states, so the *Watson* decision could not make law for the entire country (a point that will become important when we get to the *Hull Church* case decided

about 100 years later). However, its persuasive force clearly influenced the common law of California, as articulated by the California Supreme Court, to whose decisions we now turn.

C. *The California Supreme Court Cases*

1. Baker

Just because a majority of a local congregation changes beliefs doesn't mean the property can change in use: That is the lesson of *Baker, supra,* 79 Cal. 365.

In *Baker*, a congregation of the Reformed Church incorporated as the First Reformed Church of the City Stockton. The articles of incorporation of the new church included a direct reference to the "Heidelberg Catechism." (*Baker, supra*, 79 Cal. at p. 373.)

The corporation owned some land used as a parsonage. By the late 1880's, however, it appears that the majority of the members of the congregation had gone over to the Lutheran persuasion. (*Baker, supra*, 79 Cal. at p. 374 ["the defendants, even though they constituted a majority of the members"].) So the corporation's trustees changed the name of the corporation to the German Lutheran Zion Society, and used the parsonage for Lutheran ministers.

The remnant Reformed Church members sued to recover the property and the California Supreme Court affirmed a judgment in their favor. The court noted that the church property was originally dedicated to the use of the Reformed Church, that it was held in trust by the corporation's trustees, and the trustees had no power to change its original purpose. "It is thus made clear that the property in question

was held by the Reformed Church in trust for its members, and the defendants, even though they constituted a majority of the members, had no right and no power to divert it to the use of another and different church organization." (*Id.* at p. 374.) That is, there was no ipso facto doctrine of majority rule, or of corporate qua corporate control.

2. Wheelock

While *Baker* had only adumbrated the idea that local congregations who were members of a general church could not necessarily claim control of local church property based on title being in a local church corporation. The point would become explicit in *Wheelock, supra*, 119 Cal. 477, which fully embraced *Watson's* principle of government approach.

There, a dispute arose in the First Presbyterian Church of Los Angeles, which had been incorporated, as to where to spend the proceeds from a real estate sale -- location A or location B. The *corporation's trustees* followed the majority of the congregation and wanted location A. The supporters of location B took their case to a *church tribunal* within the Presbyterian Church -- one that the Supreme Court in its opinion would acknowledge as having "control and supervision of the Presbyterian Churches of the city of Los Angeles." (*Wheelock, supra*, 119 Cal. at p. 479.) The church tribunal partially sided with the supporters of location B, and ordered the First Presbyterian Church of Los Angeles split into two churches, with an equitable division of the fund by a commission. (The commission chose to apportion the money based on membership numbers.)

The supporters of location A didn't like the result, and refused to pay over any money. The supporters of location B went to court for their share under the tribunal's ruling, on the theory that they were enforcing a trust against the First Presbyterian Church of Los Angeles in favor of the new church at location B. They lost on demurrer and their appeal reached the state supreme court.

The Supreme Court began with the premise that civil courts had ultimate authority over the division of the money: "It may be conceded, for the purposes of the case, that neither the Presbytery nor the commission appointed by it had the power to divide and apportion the money held by the church corporation; and that the disposition of those moneys were matters for civil courts, and that ecclesiastical decrees bearing upon such disposition are not binding upon judicial tribunals." (*Wheelock, supra,* 119 Cal. at p. 482.)

But then the high court immediately shifted gears, and noted that the decrees of the internal church tribunal *were* binding on the *incorporated* First Presbyterian Church of Los Angeles "as an ecclesiastical body": "But the ecclesiastical court known as the Presbytery had the power to deal with the First Presbyterian Church in all matters ecclesiastical. The church as an ecclesiastical body was under the absolute control and dominion of the Presbytery, and the decisions and decrees of that body were as binding upon it as the decisions and decrees of this court are binding upon inferior judicial tribunals." (*Wheelock, supra*, 119 Cal. at p. 482.)

Then came the punch line, in which the court explicitly used a principle of government approach:

"Those decrees are not only binding upon the church as an ecclesiastical body, *but they are binding and conclusive upon courts wherever and whenever material to pending litigation.*" (*Wheelock, supra*, 119 Cal. at p. 482, italics added.)

That meant that the courts had to follow the rulings of the church tribunal as to the use of the property, even if supporters of location A -- who, we must remind readers, controlled the corporation -- didn't like its ruling. (*Wheelock, supra*, 119 Cal. at p. 482.) "It is apparent that many members were grieved at such results and deemed the treatment harsh, but all must bow to the law, and ecclesiastical law equally with civil law is binding in its own domain." (*Ibid.*)

Significantly, in *Wheelock* the California Supreme Court was indifferent to the fate of the First Presbyterian Church of Los Angeles *qua corporation*. Inherent in following the church tribunal's decree the high court *distinguished* the corporation from the "church proper": "The spiritual or ecclesiastical body being dissolved, what becomes of the money held by the corporation? This question brings before us the consideration of the status of the corporation as relating to the church proper. The Civil Code of this state (original section 595) expressly permits religious bodies to incorporate, but such incorporation is only permitted as a convenience to assist in the conduct of the temporalities of the church. Notwithstanding incorporation the ecclesiastical body is still all important. *The corporation is a subordinate factor in the life and purposes of the church proper.* A religious corporation like the one at bar, under the laws of this state, is something peculiar to itself. *Its*

function and object is to stand in the capacity of an agent holding the title to the property, with power to manage and control the same in accordance with the interest of the spiritual ends of the church." (*Wheelock, supra*, 119 Cal. at pp. 482-483, italics added.)

Later in the opinion the court returned to that distinction: "It is insisted that the First Presbyterian Church being incorporated the fact of incorporation stands as a lion in the path absolutely prohibiting any application of the doctrine of a *pro rata* division of the property. It is declared that the action of the Presbytery in dissolving the church . . . would result in an absolute dissolution of the corporation, and it is contended that a corporation under the laws of this state cannot be dissolved in that way. The trial court took this view of the case, and upon this ground sustained a general demurrer to the complaint. . . . But the solution of this contention does not appear to be material. A corporation composed simply of the trustees, or of all the members, is still a body separate and distinct from the church proper . . . ." (*Wheelock, supra*, 119 Cal. at pp. 485-486.)

The decision ended by rejecting the view of a Michigan court, expressed in *Wilson v. Livingstone* (1894) 99 Mich. 594, which had adhered to a simple majority-rule rationale independent of the principle of government in the Presbyterian Church: "The Michigan case especially declares that a majority of the members may control the property of the corporation, and practically that the title of the property of the corporation follows the majority wherever it may lead and however often and radical a change of faith overtakes it. In this state we take the other view." (*Wheelock, supra*, 119 Cal. at p. 487.)

Our Supreme Court had then only to note that the supporters of location B had a kind of consolation prize. Since they had not seceded from the Presbyterian Church, they were beneficiaries of the trust as much as the supporters of location A. (*Wheelock, supra*, 119 Cal. at p. 483.)

Further expounding on the problem of corporate ownership qua corporate ownership the court, in a series of quotes from other courts, included one from Indiana based on the locus of authority test: "It is declared by the supreme court of Indiana that 'the title to the property of a divided church is in that part of the organization which is acting in *harmony with its own law*.'" (*Wheelock, supra*, 119 Cal. at p. 485, italics added, quoting *White Lick, etc. v. White Lick, etc.* (1883) 89 Ind. 136.)

3. Horsman

The United States Supreme Court in *Watson* had clearly wanted civil courts to be able to resolve church property disputes without becoming mired in religious controversy and so deferred to the internal government of whatever church happened to be involved. *Horsman, supra*, 129 Cal. 131 is, in fact, a vindication of that approach, demonstrating how the principle of government approach allows secular courts to deftly avoid entangling themselves in theological matters.

In 1841 the Church of the United Brethren in Christ had organized itself into a general conference and adopted a constitution. Forty-eight years later, in 1889, at the general conference, the church adopted a new constitution. But it wasn't unani-

mous -- the vote was 110 to 20. The 110 became known as the "liberals" while the 20 were the "radicals." (*Horsman, supra*, 129 Cal. at p. 134.)

In Tulare County, however, most of the members (75 out of 80) sided with the radicals. The radicals sued to recover two tracts of land given the church about 10 years prior to the 1889 split, and then occupied by the liberals. (See *Horsman, supra,* 129 Cal. at pp. 134-135.)

Horsman began, like *Watson*, with the same three-category topology of religious property disputes: "The courts are in no way concerned with the transactions of ecclesiastical bodies except in so far as tangible rights of person or property are affected. Questions relating to these are divided by the court into three classes: The first is where property, by the express terms of the grant, 'is devoted to the teaching, support, or spread of some specific form of religious doctrine or belief'; the second, where it is held by or in trust for an independent congregation; and the third, where it is held by or in trust for a congregation or other association subordinate to some general church organization." (*Horsman, supra*, 129 Cal. at p. 136.)

However, in framing the issue before the court, the *Horsman* opinion used a phrase that we will venture to opine was, in retrospect, not the most felicitous: "true church." It said, "The sole question, therefore, is as to the identity of the church. If the radical is the true church, the plaintiffs are entitled to recover; otherwise not." (*Horsman, supra*, 129 Cal. at p. 135.) When *Horsman* was decided T.S. Eliot had not yet written his famous parody of the

"true church" in his poem "The Hippopotamus"[4] so the court was probably not as attuned to the dangers of wandering in the "miasmal mist" searching for the "true church" as later courts would be.

That said, it is clear from *Horsman* that our high court was not engaged in figuring out who was *theologically* correct in the dispute between the liberals and the radicals *within* the Church of the United Brethren in Christ. The liberals won, because the principle of government in the Church of the United Brethren in Christ was that the decisions of the General Conference were authoritative, and the General Conference had sided with the liberals.

The split in the Church of the United Brethren in Christ had generated litigation all over the country, including Michigan (see *Bear v. Heasley* (1893) 98 Mich. 279, where the Michigan Supreme Court had held in favor of the radicals on the theory that the general conference of 1889 failed to observe the requirements of the constitution adopted by the general conference in 1841. The California Supreme Court used the Michigan decision as a foil, taking the opportunity to articulate a principle of government view. The general conference was to be "'the highest legislative body . . . in the church'" and our high court analogized the general conference of the church, in its powers, to the British Parliament. (*Horsman, supra*, 129 Cal. at p. 140.) In the process, the *Horsman* court expressly adopted the principle of government views propounded by dissenting Judge

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[4] See Eliot, The Hippopotamus (1920) ["The hippo's feeble steps may err/ in compassing material ends/ while the True Church need never stir/ to gather in its dividends."].

Grant in the Michigan case. (See *Horsman, supra*, 129 Cal. at pp. 137-138.)[5]

4. Committee of Missions

Committee of Missions, supra, 157 Cal. 105 represents a fairly lengthy exploration by our Supreme Court into the mechanics of the church government of a group known as the as Pacific Synod of the Cumberland Presbyterian Church. The opinion relates that the Cumberland Presbyterians broke off from the Presbyterian Church in the United States of America because the Cumberland group disagreed with predestinarian aspects of the Westminster Confession. (*Id.* at pp. 110-112.)[6]

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[5] There was, to be sure, a tiny bit of lingering implied trust theory reflected in the court's long quotation with clear approval from Judge Grant's dissent: Only if the governing body's act "'destroyed'" the "'identity'" of the church so that it "'thereby became a new and different church'" could the act of the governing body not be dispositive. (See *Horsman, supra*, 129 Cal. at pp. 137-138.) Even so, the *Horsman* court noted, though, that such identity-destroying acts would only arise "in very extreme cases -- of which this is not one." (*Id.* at p. 138.) (And for what it is worth, or research has yet to uncover any California case employing a "destruction-of-identity" rationale in order to depart from what would be the result under a principle of government theory.) Since destruction-of-identity is an *exception* to *Horsman's* general approach of looking to the principle of government, it makes no difference for our purposes in this opinion whether that exception might be obviated by later United States Supreme Court cases that would caution against becoming involved in any religious controversy.

[6] To be sure, three times in the opinion the court used the word "fatalistic" to describe the doctrines of the U.S.A. group. (*Committee of Missions, supra*, 157 Cal. at pp. 112-113.) That makes no difference. As the recently popular saying went,

However, in 1900, the U.S.A. Presbyterians repudiated the "offensive doctrines contained in the Westminster confession" (*Committee of Missions, supra*, 157 Cal. at p. 113.), and that led to a movement to unify the Cumberland and U.S.A. churches. A unification did indeed take place in 1906, which was challenged by dissenters in the Cumberland group. Those dissenters decided that there were "vacancies" in the board of trustees of the *corporation* that owned the Cumberland church property (the official name was the "Permanent Committee of Missions of the Pacific Synod of the Cumberland Presbyterian Church in the United States"), and purported to elect their own slate. Then, in the name of the corporation, they sued the U.S.A church to deliver the Cumberland church's property over to them. They lost at trial and the Supreme Court affirmed in a detailed exposition of the internal church government of the Cumberland church -- the point of which was that the unification had been duly approved by the *highest governing authority* of the Cumberland church, quoting *Watson's* "highest of the church judicatories to which the matter has been carried" language. (*Committee of Missions, supra*, 157 Cal. at pp. 128-129, quoting *Watson, supra*, 80 U.S. at p. 727.)

Indeed, in parallel with *Watson*, the California Supreme Court emphasized that the rule of looking to the highest church authority "although not accepted in England" was "the prevailing rule in this country." (*Committee of Missions, supra*, 157 Cal. at

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whatever. Like the case before us, the *Committee of Missions* case would not turn on such local color.

p. 128.) Thus it made no difference that the unification hadn't been put to a vote of the membership (*id.* at p. 122-123), or that the litigation involved donations made to the Cumberland church as such (*id.* at p. 126-127).

5. Rosicrucian Fellowship

Rosicrucian Fellowship, supra, 39 Cal.2d 121, is not a case readily susceptible to a reader-friendly retelling of its basic facts. Suffice to say, though, that one point comes through loud and clear: In the tradition of *Wheelock*, the high court did not operate under a rule that corporate ownership was the end of all inquiries as to rights to church property (in that case, the property was called "Mt. Ecclesia").

The case involved a religious organization that didn't have *any* organized form of church government -- not hierarchical, not congregational, not *any*. (See *Rosicrucian Fellowship, supra,* 39 Cal.2d at p. 128 ["The judgment . . . declared . . . that the church has no ecclesiastical organization or system of church government . . . ."] and p. 133 [noting plaintiffs' argument that the Rosicrucians were an "anomalous class" because it fit none of the three forms of church government (hierarchical, assembly or congregational)].)

Indeed, one of the arguments in the *Rosicrucian Fellowship* case was that in a religion that has no church government, by necessity the fact that a religious corporation owns title to property trumps any rights in mere followers of the church. The high court clearly rejected that point: (See *Rosicrucian Fellowship, supra,* 39 Cal.2d at p. 134 ["It appears that from the first, the unorganized church and its

members through its leaders, the Heindels, have exercised property and civil rights incident to ecclesiastical functions which were not surrendered to plaintiff corporation."].) Rather, our Supreme Court affirmed a judgment declaring that the corporation was a trustee for an "unincorporated church [which] was the basic group and owned most of the rights" to the property. (*Id.* at p. 135.)

6. Providence Baptist

The problem of governance in the context of a congregationally organized church was confronted by our high court in *Providence Baptist, supra,* 40 Cal.2d 55. A Baptist pastor had incorporated a Baptist church in 1945, with a board of three trustees (himself and two others). One day in 1950, the two other trustees adopted a resolution removing him and the next day at a meeting of members of the congregation adopted the same resolution. The incorporated church and its trustees sued the pastor to get back certain funds and records. The trial court issued a decision that the trustees were entitled to those funds and records. However, it also concluded that neither the trustees nor the pastor could hold a fair election about removing him from office, and so appointed a referee to conduct an election among all the members after due notice. The pastor petitioned for writ relief on the theory that the court was intruding into ecclesiastical matters; his writ was denied in a published opinion.

The *Providence Baptist* court specifically noted that the church "is the congregational type in which its affairs are controlled by the members." (*Providence Baptist, supra,* 40 Cal.2d at p. 61.) Hence there was "no tribunal but the congregation" to

which the court might look, and, in that context, a civil court could indeed determine "whether the meeting at which a pastor was removed was properly conducted according to the usage, contracts and rules of the society" insofar as the civil and property rights involved with the pastor's office were involved. (*Id.* at pp. 61-62.)

As in all the previous cases (save maybe *Rosicrucian Fellowship*, the point of which was that corporate form was not dispositive), the California Supreme Court centered its decision on the proper locus of ecclesiastical authority -- in its phrase "the appropriate body of the church." It was *that body* that would make the decision. (*Providence Baptist, supra*, 40 Cal.2d at p. 63 ["While we may not be dealing with the officer of a corporation in the strict sense (the pastor of a church is involved) the situation is similar and we see no reason why an election cannot be conducted where, as appears, a fair and proper election cannot be conducted by the church and the election previously held was irregular and of no effect. In other words the appropriate body of the church is assisted in acting within its proper sphere, according to its rules and regulations, to protect civil and property rights."].) Such an activity was, of course, different from determining whether the pastor was "preaching a theology contrary to the denominational doctrine." (*Ibid.*)

D. The United States Supreme Court Cases in the Decade Prior to Church of Palm Springs

As we shall see when we come to *Church of Palm Springs, supra*, 89 Cal.App.3d 910, that court read

four United States Supreme Court cases of the previous decade as *requiring* that states use a four-factor approach that would come to be called "neutral principles analysis." We now turn to the question of whether any of those cases really did so.

1. Hull Church

Hull Church arose out of a secession of local Presbyterian Churches from the general Presbyterian Church, specifically involving two congregations in Georgia.

Readers will recall that *Watson* was decided as a diversity case, so it did not announce a nationwide rule. Thus, it was possible, even by the late 1960's, for a state like Georgia to still be using Lord Eldon's implied trust theory in which a major component was whether a religious organization had "departed from the tenets of faith and practice it held at the time the local churches affiliated with it." (*Hull Church, supra*, 393 U.S. at p. 441.) And in the opinion United States Supreme Court expressly linked Georgia's approach with the English implied-trust-departure-from-doctrine theory. (See *id.* p. 443, fn. 2 [saying that the Georgia theory "derives from principles fashioned by English courts" and citing the English opinions articulating those principles].)

Right from the beginning, the *Hull Church* court formulated the issue in terms of whether Georgia's implied-trust-departure-from-doctrine theory offended the First Amendment: "Under Georgia law the right to the property previously used by the local churches was made to turn on a civil court jury decision as to whether the general church abandoned or departed from the tenets of faith and practice it held

at the time the local churches affiliated with it. The question presented is whether the restraints of the First Amendment, as applied to the States through the Fourteenth Amendment, permit a civil court to award church property on the basis of the interpretation and significance the civil court assigns to aspects of church doctrine." (*Hull Church, supra*, 393 U.S. at p. 441.) In two sentences the federal high court had pinpointed the entanglement inherent in the implied trust doctrine. So, of course, the answer was no -- the First Amendment did *not* permit the entanglement with religious controversy inherent in Georgia's "departure-from-doctrine" approach.

The court devoted the next three paragraphs to quickly describing the litigation, the third of which returned to the theme that Georgia law required civil courts to determine departures from church doctrine. (See *Hull Church, supra*, 393 U.S. at pp. 443-444 ["the jury was instructed to determine whether the actions of the general church 'amount to a fundamental or substantial abandonment of the original tenets and doctrines of the (general church), so that the new tenets and doctrines are utterly variant from the purposes for which the (general church) was founded"'].)

Having set up the issue for resolution, the court next turned to prior U.S. Supreme Court case law. The body of the opinion was then taken up with discussions of a prior quartet of federal high court cases, all of which had adhered to *Watson's* principle of government approach: *Watson* itself, then *Gonzalez v. Roman Catholic Archbishop of Manila* (1929) 280 U.S. 1 (*Gonzalez*); *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North Amer-*

ica (1952) 344 U.S. 94 (*Kedroff*); and finally *Kreshik v. St. Nicholas Cathedral* (1960) 363 U.S. 190 (*Kreshik*).

As the descriptions of all four cases by the *Hull Church* opinion indicated, the court *agreed* with the approach of those cases:

-- It pointed out that language from *Watson* left "the civil courts *no* role in determining ecclesiastical questions in the process of resolving property disputes." (*Hull Church, supra*, 393 U.S. at p. 447, original italics.)

-- It quoted with apparent approval Justice Brandeis's point in *Gonzalez* that "'In the absence of fraud, collusion or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise.'" (*Hull Church, supra*, 393 U.S. at p. 447.)

-- It also noted that the decision of the church in Moscow in a "Moscow-based" church was binding on North American churches in *Kedroff*. (*Hull Church, supra*, 393 U.S. at pp. 447-448.

-- And it further noted that in *Kreshik* the federal supreme court had held that a legislature could not transfer control of a cathedral to churches away from the "central governing authority of the Russian Orthodox Church." (*Hull Church, supra*, 393 U.S. at pp. 448-449.)

Having finished its canvass of prior authority, the *Hull Church* court then wrote a passage that would later become the main prooftext in the *Church of Palm Springs* opinion justifying a change to "neutral

principles." Here is that passage: "The Georgia courts have violated the command of the First Amendment. The departure-from-doctrine element of the implied trust theory which they applied requires the civil judiciary to determine whether actions of the general church constitute such a 'substantial departure' from the tenets of faith and practice existing at the time of the local churches' affiliation that the trust in favor of the general church must be declared to have terminated." (*Hull Church, supra*, 393 U.S. at pp. 449-450.)

When read in context, however, the point of that paragraph was consistent with its main point of the *Hull Church* opinion: Use of the implied trust doctrine with its departure-from-doctrine element jeopardized "First Amendment values" by making property "turn on the resolution by civil courts of controversies over religious doctrine and practice." (*Hull Church, supra*, 393 U.S. at p. 449.) That paragraph was clearly *not* intended to suggest that the principle of government approach offended First Amendment values, as shown by what had come just before -- an approving discussion of four decisions all of which had *used* the principle of government approach.

The rest of the paragraph and the next one were elaborations on the theme that the Georgia implied trust doctrine required civil courts to decide religious controversies, but -- and this is significant -- the *Hull Church* court went out of its way to *distinguish* the *Gonzalez* decision from the *Hull Church's* condemnation of civil courts adjudicating religious doctrine. *Gonzalez* was a case where a will directed that a family member be appointed to a chaplaincy in the Roman Catholic Church, as if the governing authori-

ties of that church had nothing to say in the matter. The trial court entered an order requiring the appointment. The United States Supreme Court affirmed a judgment of the Supreme Court of the Philippines *reversing* the trial court's upending of the proper ecclesiastical chain of command. (See *Hull Church, supra*, 393 U.S. at p. 447.) The *Hull Church* court acknowledged that *Gonzalez* involved a "marginal civil court review of ecclesiastical determinations" (*Hull Church, supra*, 393 U.S. at p. 447), an acknowledgement that is understandable given that Justice Brandeis left the door open in *Gonzalez* for civil court determinations of whether ecclesiastical determinations involved "fraud, collusion or arbitrariness." The court said, though, that the *Gonzalez* opinion had not erred even under the *Hull Church* court repudiation of the Georgia implied trust doctrine, in language that once again emphasized *Watson's* principle of government approach:

"Since the Georgia courts on remand may undertake to determine whether petitioner [the general church] is entitled to relief on its cross-claims, we find it appropriate to remark that the departure-from-doctrine element of Georgia's implied trust theory can play no role in any future judicial proceedings. The departure-from-doctrine approach is *not susceptible of the marginal judicial involvement contemplated in Gonzalez.* Gonzalez' rights under a will turned on a church decision, the Archbishop's, as to church law, the qualifications for the chaplaincy. *It was the archbishopric, not the civil courts, which had the task of analyzing and interpreting church law in order to determine the validity of Gonzalez' claim* to a chaplaincy. Thus, the civil courts could adjudicate

the rights under the will without interpreting or weighing church doctrine but simply *by engaging in the narrowest kind of review of a specific church decision -- i.e., whether that decision resulted from fraud, collusion or arbitrariness.* Such review does *not* inject the civil courts into substantive ecclesiastical matters." (*Hull Church, supra*, 393 U.S. at pp. 450-451, all italics added.) And with that distinguishment of *Gonzalez*, the *Hull Church* court reversed the judgment of the Georgia Supreme Court.

However, Justice Harlan, in concurrence, wanted to make a point about *express* trusts, that had not been issue in *Hull Church*: While he agreed with the majority that Georgia's departure-from-doctrine doctrine meant unconstitutional entanglement with religion because it forced "civilian courts to weigh the significance and the meaning of disputed religious doctrine," he saw nothing wrong with civilian courts enforcing express trusts. The example he gave was one where a donor "expressly gives his church some money on the condition that the church never ordain a woman as a minister or elder" or "never amend certain specified articles of the Confession of Faith" then "the church should not be permitted to keep the property simply because church authorities" have approved the "doctrinal innovation." (*Hull Church, supra*, 393 U.S. at p. 452 (conc. opn. of Harlan, J.). We will meet the spirit of Justice Harlan's concurrence again when we discuss section 9142. But for the moment we now turn to the second of the four U.S. Supreme Court cases preceding *Church of Palm Springs*.

2. Eldership

The *Eldership* case had reached the U.S. Supreme Court's docket prior to the *Hull Church* case, and had been remanded for consideration in light of *Hull Church*. (*Eldership, supra*, 396 U.S. at p. 367, fn. 2.) It was, literally, a one-paragraph per curiam opinion dismissing an appeal "for want of a substantial federal question" because, on remand, the state court had gotten it right and not offended First Amendment principles by using a departure-from-doctrine approach. (*Id.* at p. 367.)

Specifically, on remand, the Maryland intermediate appellate court had "relied upon" four general sources, described only in the most general terms by the *Eldership* court: (1) state statutes; (2) language in deeds conveying the properties; (3) terms of charters of the corporations; and (4) provisions in the church's constitution pertinent to the ownership and control of church property. (*Eldership, supra*, 396 U.S. at p. 367.) Since the matter had been resolved in the state courts without "inquiry into religious doctrine," there was a "want of a substantial federal question" and the appellants' appeal was dismissed. And that was *all* the Eldership opinion said. (*Eldership, supra*, 396 U.S. at p. 368.)

However, there was a three-justice concurring opinion written by Justice Brennan who had authored the opinion for the court in *Hull Church*. Justice Brennan's concurring opinion was obviously intended to provide helpful guidance to state legislatures and courts. (See generally *Eldership, supra*, 396 U.S. at p. 368 (conc. opn. of Brennan, J.).)

Structurally, the concurring opinion was straightforward: There were three *permissible* ways for states to adjudicate church property disputes, even

though in *Hull Church* the high court had said that departure-from-doctrine was not permissible:

(1) *The principle of government*: "Thus the States may adopt the approach of *Watson v. Jones* . . . and enforce the property decisions made . . . within a church of hierarchical polity by the highest authority that has ruled on the dispute at issue . . . ." (*Eldership, supra*, 396 U.S. at pp. 368-369 (conc. opn. of Brennan, J.)

(2) *Neutral principles*: "'[N]eutral principles of law, developed for use in all property disputes,' [citation] provide *another* means for resolving litigation over religious property." (*Eldership, supra*. 396 U.S. at p. 370 (conc. opn. of Brennan, J), italics added.)

(3) *Special Statutes*: "A third possible approach is the passage of special statutes governing church property arrangements in a manner that precludes state interference in doctrine." (*Eldership, supra*, 396 U.S. at p. 370 (conc. opn. of Brennan, J.)

But, with perfect parallel structure, for every permissible method, the three-justice concurring opinion in *Eldership* had a caveat:

(1) For the principle of government, the three justices cautioned that if the question of the identity of the governing body is *itself* a matter of "substantial controversy," then "civil courts are not to make the inquiry into religious law and usage that would be essential to the resolution of the controversy." (*Eldership, supra*, 396 U.S. at pp. 369-370 (conc. opn. of Brennan, J.).) We note that the question of identity *qua* identity of the governing body was not being made off-limits, only reference to "religious law and usage" to make the determination.

(2) For the neutral-principles-formal title approach, the warning was that "general principles of property law may not be relied upon if their application requires civil courts to decide doctrinal issues." (*Eldership, supra*, 396 U.S. at p. 370 (conc. opn. of Brennan, J.).)

(3) Finally, the statutory approach had to be "carefully drawn to leave control of ecclesiastical polity, as well as doctrine, to church governing bodies," (*Eldership, supra*, 396 U.S. at p. 370 (conc. opn. of Brennan, J.)), a formulation that obviously contemplated some deference to "ecclesiastical polity."

Also, in addressing *Watson's* principle of government approach, it is worth noting that the three-justice concurring opinion in *Eldership* added a footnote to address the issue of *express* trusts that had been the subject of Justice Harlan's separate concurrence in *Hull Church*: *Express trusts* could not be "enforced if enforcement is constitutionally impermissible under [*Hull Church*]." And then the three justices added: "Any language in *Watson, supra*, at 722-723, that may be read to the contrary must be disapproved. Only express conditions that may be effected without consideration of doctrine are civilly enforceable." (*Eldership, supra*, 396 U.S. at p.369, fn. 2 (conc. opn. of Brennan, J.) (That last bit by a minority of three justices purporting to disapprove a previous majority opinion was unusual for a concurring opinion. The last we checked, three justices on a nine-justice court cannot, in a separate concurring opinion, disapprove of language in a previous majority opinion, but since the issue doesn't arise in the case before us -- even the three justices in the *Eldership* concurrence recognized the legitimacy of the

principle of government approach -- we need not go any further into the matter.)

Watson's approach (and by extension, California's *Baker-Wheelock* line), had easily survived *Eldership*. That approach would actually be specifically reapproved in the next case.

3. Serbian Orthodox

If the three judges who had concurred in *Eldership* had any thought of rejecting Watson's principle of government approach, it was clearly dispelled in the *Serbian Orthodox* case, where Justice Brennan, this time writing for the majority, wrote a ringing affirmation of the *Watson* highest judicatory tribunal rule, quoting large swaths of the *Watson* opinion with gusto, including its "'right to establish tribunals . . . among themselves'" language that we have already quoted above. (See *Serbian Orthodox, supra*, 426 U.S. at pp. 710-711.)

To the degree that *Serbian Orthodox* represented any departure at all from previous United States Supreme Court case law, it was in the direction of squeezing out that little bit of wriggle room that Justice Brandeis had left when he wrote an introductory clause in *Gonzalez* using the words "In the absence of fraud, collusion, or arbitrariness . . . ." (*Serbian Orthodox, supra*, 426 U.S. at p. 711.)

That is, *Serbian Orthodox* was all about whether there was an arbitrariness exception to the principle of government approach. If there had been one before based on language in *Gonzalez*, there weren't any more after the *Serbian Orthodox* court got through with it. The highest tribunal in the Serbian Orthodox Church -- and there was no question on the

point -- had demoted, then defrocked, a particular bishop. The Illinois state Supreme Court, however, had determined that the bishop's removal had been "'arbitrary'" (see *Serbian Orthodox, supra*, 426 U.S. at pp. 708, 718) because (quoting *Serbian Orthodox* quoting the Illinois Supreme Court) "'a detailed review of the evidence discloses that the proceedings resulting in [the bishop's] removal and defrockment were not in accordance with the prescribed procedure of the constitution and the penal code of Serbian Orthodox Church.'" (*Serbian Orthodox, supra*, 426 U.S. at p. 718.)

That review conducted by a state was beyond the pale -- the Supreme Court was quite clear that the civil courts were not to play amateur canon lawyers and second-guess the decisions of a church's highest tribunal. In effect, the Illinois Supreme Court had impermissibly engaged in a "judicial rewriting of church law." (*Serbian Orthodox, supra*, 426 U.S. at p. 719; see also *id.* at pp. 712-713 ["The conclusion of the Illinois Supreme Court that the decisions of the Mother Church were 'arbitrary' was grounded upon an inquiry that persuaded the Illinois Supreme Court that the Mother Church had not followed its own laws and procedures in arriving at those decisions."].)

We need only note further that the *Serbian Orthodox* opinion, besides invoking -- not rejecting -- the *Watson* principle of government or highest tribunal approach, contains a number of passages which unmistakably approve of looking to a church's organizational hierarchy as a principle for settling church property disputes, and in fact indicate that for states to *ignore* hierarchy creates First Amendment prob-

lems of its own: "For where resolution of the disputes cannot be made without extensive inquiry by civil courts into religious law and polity, the First and Fourteenth Amendments mandate that civil courts shall not disturb the decisions of the highest ecclesiastical tribunal within a *church of hierarchical polity, but must accept such decisions as binding on them*, in their application to the religious issues of doctrine or polity before them." (*Serbian Orthodox, supra*, 426 U.S. at p. 709, italics added.)

And further, "In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, *the Constitution requires that civil courts accept their decisions as binding upon them*." (*Serbian Orthodox, supra*, 426 U.S. at pp. 724-725, italics added.)

The two separate opinions from *Serbian Orthodox* should also be noted, since those opinions foretold future nuances to be developed in the last of the four cases, *Jones*. Chief Justice Burger (joined by Justice White) wrote a one-paragraph concurrence to make the point that *whether* a church was hierarchically organized was still a matter for the civil courts' "ultimate decision." (*Serbian Orthodox, supra*, 426 U.S. at p. 725 (conc. opn. of C.J. Burger).)

And Justice Rehnquist (joined by Justice Stevens) dissented in the name of state's rights defending the Illinois state court approach. He also mixed in a little skepticism about the *Watson* rule, or at least the

exception for arbitrariness that Justice Brandeis had inserted into it in *Gonzalez*, in this rhetorical flourish: "If the civil courts are to be bound by any sheet of parchment bearing the ecclesiastical seal and purporting to be a decree of a church court, they can easily be converted into handmaidens of arbitrary lawlessness." (*Serbian Orthodox, supra*, 426 U.S. at p. 727 (dis. opn. of Rehnquist, J.).)

4. Jones

The final movement in the quartet played before the *Church of Palm Springs* case came by way of *Jones v. Wolf* (1979) 443 U.S. 595, which might be styled the sequel to *Hull Church*. As we have seen, less than 10 years before Georgia had been using Lord Elton's implied trust theory, that theory had failed constitutional scrutiny in *Hull Church*, and the state had been forced to develop an alternative approach. The approach chosen by the Georgia courts was described by *Jones* as a "neutral-principles analysis." (*Jones, supra*, 443 U.S. at p. 601.) (The evolution of Georgia law after *Hull Church* was traced in *Jones v. Wolf, supra*, 443 U.S. at pp. 599-601.)

Under the neutral principles analysis used by the Georgia courts, the numerical majority of a particular Presbyterian congregation had voted to secede from the general church (the split was 164 to go, 94 to stay), and the *Georgia* courts, finding no basis for an implied trust in state statutes, the corporate charter of the local church, or even in the Presbyterian Book of Church Order, held that "legal title to the property of the [local] Vineville church was vested in the local congregation," and further held "[w]ithout further analysis or elaboration," the local

congregation was represented by the majority faction. (*Jones, supra*, 443 U.S. at p. 601.)

The central problem before the federal high court in *Jones* was whether Georgia's relatively recent conversion to neutral principles analysis was *permissible* under the First Amendment. One must remember: Up to *Jones*, a majority of the United States Supreme Court had never clearly okayed neutral principles analysis. The closest it had come was that one-paragraph dismissal of an appeal from the Maryland state courts in *Eldership*.

Interestingly though (interesting in that it helps explain the nature of the issue that the court was tackling in *Jones*) the four dissenters did *not* include either Justice Rehnquist or Justice Stevens, who had favored a states' rights position in their dissent in *Serbian Orthodox*. This time they stood in the five-justice majority, which is precisely what one would expect given the states' right issue that was before the *Jones* court.

The split in the court was over whether the *Watson* highest tribunal approach was, in fact, *mandated* on the state law as a matter of First Amendment law (the dissenters' position) or whether a state had the *option*, consistent with the First Amendment, of adopting the neutral principles approach. (See *Jones, supra*, 443 U.S. at p. 605 (maj. opn.) ["We cannot agree, however, that the First Amendment requires the States to adopt a rule of compulsory deference to religious authority in resolving church property disputes, even where no issue of doctrinal controversy is involved."].)

Yes, said the majority. And they perceived that the neutral principles approach has some things go-

ing for it: "The primary advantages of the neutral-principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity. The method relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice." (*Jones, supra*, 443 U.S. at p. 603.) That meant states were "constitutionally entitled to adopt neutral principles of law as a means of adjudicating a church property dispute." (*Id.* at p. 604.)

The *Jones* majority also appears to have been aware of an obvious problem with the fact of a *transition* from a highest tribunal approach to neutral principles analysis: Neutral principles analysis makes a church property dispute issue turn on the quality of legal drafting done years *prior* to the dispute, and drafting done in a different legal environment.

And so the majority added this -- well, it's not quite dicta because the point is to bolster the *permissibility* of using neutral principles analysis, but, strictly speaking, it does involve speculation involving permutations of the approach the court was approving -- language to round out its opinion: "Under the neutral-principles approach, the outcome of a church property dispute is not foreordained. At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the

general church. *Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church.*" (*Jones, supra*, 443 U.S. at p. 606, italics added.)

Still, the case wasn't over -- the majority was not willing to merely affirm the result in the Georgia courts. That is, Georgia neutral principles might declare the property to be controlled by the local congregation, but that still left the question of exactly who was the "true representative" of that congregation? (See *Jones, supra*, 443 U.S. at p. 607 ["Petitioners earnestly submit that the question of which faction is the true representative of the Vineville church is an ecclesiastical question that cannot be answered by a civil court."].)

The Georgia courts, however, hadn't dealt with *that* problem. So the *Jones* majority assured them that a presumption of majority rule would be permissible under the First Amendment (*Jones, supra*, 443 U.S. at pp. 607-608), but also noted that there were strains in Georgia law that might allow courts to ascertain the true representatives of the local congregation based upon a *civil court's* analysis of the Presbyterian Church's Book of Church Order, and *that* analysis was definitely impermissible given that the hierarchical Presbyterian Church had *already* made that decision in favor of the minority. (See *Jones, supra*, 443 U.S. at p. 609 ["All this may suggest that the identity of the 'Vineville Presbyterian Church' named in the deeds must be determined according to terms of the Book of Church Order, which sets out the laws and regulations of churches affiliated with PCUS. Such a determination, however, would appear to require a civil court to pass on ques-

tions of religious doctrine, and to usurp the function of the commission appointed by the Presbytery, which already has determined that petitioners represent the 'true congregation' of the Vineville church."].)

That worry dovetailed with an earlier concern expressed in the majority opinion (in the context of talking about the *advantages* of neutral principles analysis) that even neutral principles analysis might require civil courts to resolve religious controversies. If that happened, *then the principle of government rule was required as a matter of constitutional law*: "The neutral-principles method, at least as it has evolved in Georgia, requires a civil court to examine certain religious documents, such as a church constitution, for language of trust in favor of the general church. In undertaking such an examination, a civil court must take special care to scrutinize the document in purely secular terms, and not to rely on religious precepts in determining whether the document indicates that the parties have intended to create a trust. In addition, there may be cases where the deed, the corporate charter, or the constitution of the general church incorporates religious concepts in the provisions relating to the ownership of property. *If in such a case the interpretation of the instruments of ownership would require the civil court to resolve a religious controversy, then the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body.*" (*Jones, supra*, 443 U.S. at p. 604, italics added.)

E. The California Intermediate Appellate Court Cases Breaking With the State Supreme Court Cases

As it turns out, *Church of Palm Springs* and, ultimately, *Barker*, were preceded by two other decisions of the intermediate appellate court which paved the way for the break. We include those two decisions, *In re Metropolitan Baptist Church of Richmond, Inc.* (1975) 48 Cal.App.3d 850 (*Metropolitan Baptist*) and *Wilson v. Hinkle* (1977) 67 Cal.App.3d 506 (*Wilson*) because, after those four cases, California's common law regarding church property disputes appeared dramatically different from what it had been since our state's highest court had decided *Providence Baptist*.

1. Metropolitan Baptist

The very first California case to use the phrase "neutral principles" in any sort of church context was *Metropolitan Baptist, supra,* 48 Cal.App.3d 850. That fact turns out to be extremely ironic, because *Metropolitan Baptist* is probably the closest California case we have, or will review in this opinion, to employing a version of Lord Eldon's implied trust approach. And in fact the court actually inquired into the nature of the teachings of particular churches to make its decision. To be specific, the *Metropolitan Baptist* court actually ended up ascertaining whether two Northern California Baptist churches were "fundamental" Baptist churches -- as distinct from, presumably, *non*-fundamental Baptist churches. (See *id.* at p. 856.)

There was a Baptist Church in Richmond, California whose membership, by 1970, shrank to six members, and three of those were the pastor, his wife, and his adult son. So all six members voted to dissolve the church corporation, and liquidate and distribute the corporation's assets, consisting of

about $25,000. The six members wanted to split the assets one-third to a Dublin Baptist church, one-third to an Iowan Baptist Church, one-sixth to a Serviceman's Center in Long Beach, one-twelfth to an Oakland Baptist church, and one-twelfth to a Baptist seminary. (*Metropolitan Baptist, supra*, 48 Cal.App.3d at pp. 853-854.)

The Attorney General, however, became involved in the case (indeed, he was the respondent on appeal) and advocated a distribution more in keeping with the original intent of the incorporators (one of whom intervened in the case). The original articles of incorporation stated that the purpose was to form a Baptist church in Richmond, and extrinsic evidence was allowed in by the trial court that the founders also wanted that church to be "in essential accord with the beliefs of fundamental Baptist churches." (*Metropolitan Baptist, supra*, 48 Cal.App.3d at p. 855.) Several of the proposed distributees obviously did not qualify, such as the seminary and the Serviceman's Center.

The trial court used an approach of trying to approximate the intent of the incorporators: The assets were intended to go to "fundamental" Baptist churches in Richmond, and, since there were no such "fundamental" Baptist churches in Richmond, the next best thing was to split them between the two geographically closest "fundamental" Baptist churches, the one in Oakland and the one in Dublin. (See *Metropolitan Baptist, supra*, 48 Cal.App.3d at pp. 855-856.) The six-member Richmond Baptist church appealed.

In affirming, the *Metropolitan Baptist* court devoted almost no attention to the problem that it had

chosen the recipients of the assets based on a religious test -- whether they were "fundamental" or not, and certainly did not discuss the implications of a court being forced to make such a selection. The whole issue was taken care of in two paragraphs with no citation to any authority: "Our first inquiry is whether the superior court's determination, that the Church's purpose was to teach and preach the Scriptures, as a church in Richmond, Contra Costa County, in essential accord with the beliefs of fundamental Baptist churches, was supported by substantial evidence." (*Metropolitan Baptist, supra*, 48 Cal.App.3d at p. 856.)

That was one paragraph, setting up the issue. It was followed by a second paragraph merely saying that substantial evidence supported the trial court's conclusion, and which did not give any details. (It probably would have been productive if it had -- the very act of writing up why the Oakland and Dublin churches qualified as "fundamental" Baptist churches might have alerted the *Metropolitan Baptist* court that it was wandering in the miasmal mist searching for a "true" "fundamental" Baptist church.)

Next, however, came the main issue, which was in response to the assertion, raised by the remnant of the appellant Richmond church, that the court should follow the decision of the congregation, i.e., use the principle of government rule that *Watson* and the *Baker-Wheelock* line of California Supreme Court had used., though the *Metropolitan Baptist* did not give any indication that the principle of government rule was the product of Supreme Court deci-

sions. (*Metropolitan Baptist, supra*, 48 Cal.App.3d at p. 856.)

That point was refuted by the *Metropolitan Baptist* court in an analysis that went this way: Because the Richmond church was organized as a nonprofit religious corporation, it therefore "follow[ed]" that it held its property in trust "'to carry out the objects for which the organization was created.'" (*Metropolitan Baptist, supra*, 48 Cal.App.3d at p. 857, quoting *Lynch v. Spilman* (1967) 67 Cal.2d 251, 260. (*Lynch* was a case involving a trust to establish a boys' or youth club.) Hence, the distribution was proper under the *cy pres* doctrine as carrying out "original trust purposes . . . as nearly as possible." (*Metropolitan Baptist, supra*, 48 Cal.App.3d at pp. 857-858.)

It was in that context -- that is, of justifying the application of *cy pres* to the liquidation of a congregationally organized church -- that the *Metropolitan Baptist* court made statements that resolution of church property disputes "may sometimes touch upon ecclesiastical concepts," but then juxtaposed the comment against the development of neutral principles. ("To resolve the often delicate question of the First Amendment's application to disputes concerning church property, a principle of state 'neutrality' has developed. This concept has been described as the application of 'neutral principles of law, developed for use in all property disputes, which can be applied' without establishing 'religion . . . .'" (*Metropolitan Baptist, supra*, 48 Cal.App.3d at pp. 858-859, quoting *Hull Church, supra*, 393 U.S. at p. 449.)

The court did not address how the *cy pres* doctrine -- to be sure, a traditional and neutral principle of trust law in non-religion cases -- -- interacted with

the need of courts to stay away from religious disputes, or differed from Lord Eldon's discredited implied trust doctrine when applied to church property disputes. Nor did the court mention, much less address, the line of California Supreme Court cases that adhered to a governmental principle approach. That lacuna is particularly conspicuous given that the Richmond Church had invoked it in order to justify their (not its, their -- it was a congregationally organized church, remember) proposed distribution. (See *Metropolitan Church, supra*, 48 Cal.App.3d at p. 856 [noting contention that the congregation's proposed distribution was an "'ecclesiastical decision binding and conclusive upon the court'" albeit "'under the doctrine of separation of church and state'" as distinct from prior California precedent].)

2. Wilson

The next case on the road to *Barker* was *Wilson, supra*, 67 Cal.App.3d 506. Strictly speaking, *Wilson* was not a property dispute case, except to the degree that a *purely* religious argument about whether a minister who *otherwise* would have control over church facilities implicated a property dispute. It was framed and written as a *jurisdiction* case.

In *Wilson*, there was a "former minister" of what appears from the facts as stated by the court to be local congregation (with church property) that was part of the "Unity Movement" and a "present minister" of the same congregation. The former minister and his followers sued the present minister for quiet title and return of the church property on the ground that the present minister had strayed from the (unnamed in the opinion) tenets of the Unity Movement. (See *Wilson, supra*, 67 Cal.App.3d at pp. 508-509.)

Judging from the opinion, the doctrinal straying was the *only* ground for the suit. There is no assertion by the former minister that, for example, the Unity Movement was a hierarchical religious organization and that its highest church adjudicatory had removed the present minister from his post.

Thus, anyone at all familiar with the repudiation by the federal high court in *Watson* of Lord Eldon's implied trust theory would know the case was doomed. It was thus no surprise that the *Wilson* court affirmed a judgment after demurrer to the complaint based on lack of jurisdiction. (See *Wilson, supra*, 67 Cal.App.3d at pp. 509-512.) *Wilson* involved precisely the kind of religious controversy framed in the guise of a church property dispute that *Watson* had tried to avoid.

However, the *Wilson* court also swept (or, to be precise, tried to sweep) from the field several cases from the *Baker-Wheelock* line on the theory that *Hull Church* had implicitly overruled it. First it opened a paragraph with this broad declaration: "The California cases cited by appellants are either inapposite or have been implicitly overruled by *Hull, supra*, and *Serbian Eastern Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696 [no pinpoint page cite, parallel citations omitted]." (*Wilson, supra*, 67 Cal.App.3d at p. 511.) Alas, the *Wilson* court did not specify *which* "California cases" it was talking about, or why it thought they had been overruled.

Next followed a paragraph explaining that that a civil court could "accept jurisdiction" where ecclesiastical questions were only incidentally involved, thus distinguishing the recently decided cases of *St. James Armenian Church of Los Angeles v. Kurkjian*

(1975) 47 Cal.App.3d 547[7] and *Metropolitan Baptist,* which we have just discussed. The paragraph, however, ended with these words: "However, we do note that the California Supreme Court cases cited in *In re Metropolitan Baptist Church of Richmond, Inc., supra,* especially *Rosicrucian Fellow., supra,* 39 Cal.2d at p. 131 -- or at least some of the language therein -- is governed and changed by *Hull.* (See also *Providence Baptist Church v. Superior Ct., supra,* 40 Cal.2d at p. 63.)"

The *Wilson* court did not elaborate, and it is not clear which precise "California Supreme Court cases" cited in *Metropolitan Baptist* the *Wilson* court was referring to. The *Metropolitan Baptist* court had cited *Rosicrucian Fellowship, supra,* 39 Cal.2d at pp. 131-132, and *Horsman, supra,* 129 Cal. at page 138, for the proposition that matters involving "creeds" "considerations of faith" and even "general polity" were "[e]cclesiastical matters" and then immediately cited *Hull Church* and the same page 131 of *Rosicrucian Fellowship* (plus two appellate opinions) for the proposition that "In such matters the state, and its courts, have no legitimate concern or jurisdiction." (*Metropolitan Baptist, supra,* 48 Cal.App.3d at p. 858.)

The only other California Supreme Court decision mentioned in *Metropolitan Baptist* (besides two non-

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[7] Actually, as the *Wilson* court said, *St. James Armenian* involved "no dispute whatsoever" about "ecclesiastical doctrine." (*Wilson, supra,* 67 Cal.App.3d at p. 511.) There, a church sued the chairman of its parish council and a friend of his who was a real estate agent for not disclosing the agent's taking commissions on the sale of old church property and the purchase of new church property.

religious charitable trust cases mentioned on page 860 of the opinion) was *Providence Baptist*, cited for the proposition -- apparently one with which the *Wilson* court *agreed* -- that courts may accept jurisdiction over property disputes when any "ecclesiastical questions" are only "indirectly involved." (*Wilson*, *supra*, 48 Cal.App.3d at p. 859.)

3. Church of Palm Springs

A little bit of ground work having been laid, *Church of Palm Springs, supra*

89 Cal.App.3d 910 (also sometimes referred to as "*Presbytery of Riverside*") struck off in a clearly different direction than the one used by the state Supreme Court in the *Baker-Wheelock* line of cases.

Preliminarily, we should note that it is an interesting legal question of whether *Church of Palm Springs* might have reached the result it did -- affirming a trial court decision to let a local church have control over the property as against the claims of a hierarchical denomination -- by following the rule of stare decisis and applying the principle of government rule from *Watson* and the *Baker-Wheelock* line. Years later, another panel of the intermediate appellate court, in *Guardian Angel*, would elegantly (elegant at least in the mathematical sense, and perhaps the stylist sense, but readers can judge that for themselves), distinguish *Church of Palm Springs* by noting that the local church in that case had had an independent existence *prior* to affiliating with a larger denomination, thus one might be able to say the substantive authority in the local church always was the local congregation: "In that case [*Palm Springs*], the local church had been

known for a number of years as the Community Church of Palm Springs, having no hierarchical affiliation. The church later affiliated with the Presbyterian Church, although it quickly discontinued the use of 'Presbyterian' in its name, reverting to 'Community Church of Palm Springs.' Moreover, throughout its history, the church had extended membership to all Protestant denominations. The church described itself as interdenominational and nondenominational." (*Guardian Angel, supra*, 118 Cal.App.4th at p. 929, citing *Palm Springs, supra*, 89 Cal.App.3d at pp. 916-917.)

In other words, as *Guardian Angel* would see *Church of Palm Springs*, the congregation was the original source of governing authority, and it never relinquished that authority upon affiliating with the larger denomination.

While the case might be so distinguished, the fact remains that the *Church of Palm Springs* opinion proceeded on the premise that the "neutral-principles" approach that had been approved for use in state courts in *Jones* was now mandatory and not just optional.

Church of Palm Springs involved a local community church that had been affiliated with the United Presbyterian Church in the United States of America (a national church). The national church was hierarchical, in "ascending representational levels of ecclesiastical authority" (*Church of Palm Springs, supra*, 89 Cal.App.3d at p. 915.) In 1967, disputes arose over unspecified "several doctrinal changes" and "a mandate for social action" adopted by the national church's general assembly; the disputes could not be resolved, and the members of the community

church "voted to withdraw from the general church." (*Church of Palm Springs, supra*, 89 Cal.App.3d at p. 917-918.)

Interestingly, the local church did not directly secede from the general denomination: In a manner reminiscent of the doctrine of exhaustion of administrative remedies, it presented a petition to 181st General Assembly of the general church to "withdraw with its property." (*Church of Palm Springs, supra*, 89 Cal.App.3d at p. 918.) However, the administrative route was never completed, in the court's phrase, "its request was never considered or decided on the merits" because the matter was referred to a committee that determined the petition had been "'filed by an independent body which has renounced the jurisdiction of the United Presbyterian Church'" and therefore, "'cannot be considered.'" (*Id.* at p. 919.) In subsequent litigation the trial court determined that the local church was the owner of the property.

It was the ambiguity of the internal proceedings that was the very first reason given by the *Church of Palm Springs* court for rejecting a disposition of the property in favor of the national church: "In the first place, there is a serious question whether the issue of ownership of the disputed property was ever finally determined on its merits by the judicatories of UPCUSA." (*Church of Palm Springs, supra*, 89 Cal.App.3d at p. 919.)

The court's second reason occupied most of the long opinion. The court began by acknowledging the truth of the proposition that decisions of the highest church judicatories must be accepted by civil courts as "'final, and as binding on them.'" (*Palm Springs,*

supra, 89 Cal.App.3d at p. 919, quoting *Watson*, *supra*, 80 U.S. 679, 727.) But, said the *Church of Palm Springs* court, that rule was expressly *qualified* (not repealed) by the more recently announced rule that civil courts must adjudicate the property dispute "without attempting to resolve the underlying ecclesiastical controversy." (*Church of Palm Springs*, *supra*, 89 Cal.App.3d at p. 920.)

The *Church of Palm Springs* court then found particularly salient a passage from *Hull Church*, *supra*, 393 U.S. at page 449 against the involvement of civil courts in religious controversy. As we have noted in this opinion, that passage did *not* mandate "neutral principles" as distinct from principle of government. (Read carefully, the passage said that the formal title doctrine was *one way* of avoiding entanglement in religious controversies; the only hard and fast rule was that civil court must not resolve disputes over church property in a way that requires them to resolve "'controversies over religious doctrine.'")

Here are the salient parts of the passage from *Hull Church* quoted by *Church of Palm Springs*. The emphasis is ours: "'[T]he first amendment severely circumscribes the role that civil courts may play in resolving church property disputes. It is obvious, however, that not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there are neutral principles of law, developed for use in all property disputes, which *can* be applied without "establishing" churches to

which property is awarded. But First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice. If civil courts undertake to resolve such controversies in order to adjudicate the property dispute, the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern. . . . [T]he [First] Amendment therefore commands civil courts to decide church property disputes *without resolving underlying controversies over religious doctrine.* Hence, States, religious organizations, and individuals must structure relationships involving church property *so as not to require the civil courts to resolve ecclesiastical questions.*'" (*Palm Springs, supra*, 89 Cal.App.3d at p. 920-921, quoting *Hull Church, supra*, 393 U.S. at p. 449, italics added by us, ellipses and brackets chosen by *Church of Palm Springs* court.)

After the long passage from *Hull Church*, the *Church of Palm Springs* case addressed the *Serbian Orthodox* opinion, which, as we have seen, used the *Watson* rule. The court recognized that the *Serbian Orthodox* opinion "held the decisions of the ecclesiastical tribunals final and conclusive." (*Church of Palm Springs, supra*, 89 Cal.App.3d at p. 921.) And that makes sense, given that the primary focus in *Serbian Orthodox* was on the right to ecclesiastical office, as distinct from control of church property.

But then the court took a turn that is harder to understand. After the passage dealing with *Serbian Orthodox* case, the *Church of Palm Springs* court read *Watson* the great dispositive enunciation of the

organizational theory, as having really, and improperly, intruded into ecclesiastical doctrine. (See *Church of Palm Springs, supra*, 89 Cal.App.3d at p. 921.) Speaking of the *Watson* case, here is the passage from *Church of Palm Springs*, omitting parallel citations, and with our italics: "However, again contrary to appellants' arguments, the decision in *Watson v. Jones* even in its pristine state did not preclude civil courts from adjudicating church disputes that are essentially property disputes only incidentally involving or arising out of ecclesiastical disputes. In *Watson v. Jones* the court was asked to decree the termination of an implied trust because of alleged departures from doctrine by the general church. (See *Presbyterian Church v. Hull Church, supra*, 393 U.S. at p. 445 . . . .) *Thus the dispute involved in the case was purely ecclesiastical. The court would have been required to determine what the orthodox doctrine was, what changes in doctrine had been made, and whether such changes as were found constituted such substantial or fundamental departures from the orthodox doctrine as to constitute a violation of the trust.* (See *Presbyterian Church v. Hull Church, supra*, 393 U.S. at pp. 449-450 . . . .) Thus the court was called upon 'to determine matters at the very core of a religion -- the interpretation of particular church doctrines and the importance of those doctrines to the religion." (*Palm Springs, supra*, 89 Cal.App.3d at pp. 921-922, italics added.)

Now, that is a most novel reading of *Watson*, given that *Watson* had tried to get civil courts away from implied trust theory and toward a principle that would recognize "no heresy." (See *Watson, supra*, 80 U.S. at p. 728 ["The law knows no heresy,

and is committed to the support of no dogma. . . . "].) And it does not do justice to the deference shown *Watson* by the United States Supreme Court in not only *Serbian Orthodox*, but in *Hull Church*, the concurring opinion in *Eldership*, and even in *Jones*. Indeed, it appears that *Church of Palm Springs* was using *Hull Church* to retroactively recast *Watson* solely as an ecclesiastical office case and not what it was -- a property dispute case. The *Church of Palm Springs* court also provided no original source citations from *Watson* for its idea that *Watson* was wading in to matters "at the very core of . . . particular church doctrines."

After the passage on *Watson*, the court next turned its attention to three of the main California Supreme Court cases, *Committee of Missions*, *Horsman*, and *Wheelock*, making the point that the first two (*Committee of Missions* and *Horsman*) involved "clearly ecclesiastical" disputes. (*Palm Springs, supra*, 89 Cal.App.3d at p. 922.) It appears that the *Church of Palm Springs* court was trying to convey the idea that *Committee of Missions* and *Horsman* were bad law in light of *Hull Church*. That interpretation is supported by the next passage, dealing with *Wheelock*.

Wheelock, according to the *Palm Springs* court, applied "general principles of trust law and concluded that the fund of money should be apportioned on the same basis as that suggested by the presbytery and its commission" and therefore it had followed "'neutral principles of law.'" (*Church of Palm Springs, supra*, 89 Cal.App.3d at p. 923.)

With the absolute greatest respect for the panel in *Church of Palm Springs*, we must conclude that

its reading of *Wheelock* (as well as its summary dismissals of *Committee of Missions* and *Horsman*) was incorrect. As we have seen (and we have quoted the appropriate passages from *Wheelock*), the *Wheelock* court was applying the *Watson* principle of government to a dispute over a particular fund: Because the appropriate governing authorities had apportioned the fund in a certain way, the civil courts had to respect that apportionment.

From there the *Church of Palm Springs* court turned its attention to the case before it, recognizing that the property dispute "arose out of an underlying controversy involving largely questions of religious doctrine." (*Palm Springs, supra*, 89 Cal.App.3d at p. 923.) Juxtaposing the religious origins of the dispute against the resolution of the dispute by the civil courts, the *Church of Palm Springs* court enunciated four propositions: "However, the dispute to be decided by the court in this case is essentially a property dispute; the only relationship between the religious controversy and the dispute in the case at bench is that the latter arose out of the former; the property dispute may be resolved without the necessity of becoming involved with or attempting to resolve the underlying ecclesiastical controversy; and the trial court acted with the propriety in determining the case on the basis of 'neutral principles of law' and 'formal title' doctrine." (*Palm Springs, supra*, 89 Cal.App.3d at p. 923.)

The first three of those propositions seem correct, even if one uses the principle of government rule from *Wheelock*. The fourth proposition -- that the trial court acted correctly in deciding the case based on neutral principles and "'formal title'"

-- does not follow under the rule of stare decisis. Whatever other merits the approach might have had, it was not the common law of California as articulated by our Supreme Court.

Things became curiouser as the court rounded the bend and came to the top of page 924 in the official reporter, which is the part of the opinion which undertook to rebut the loser's arguments. At this point, the court noted that the general church was trying to "analogize" its case to the "*Serbian Orthodox*, *Horsman*, and *Wheelock* cases." (*Church of Palm Springs, supra*, 89 Cal.App.3d at p. 924.)

Well, yes, obviously. In each of those high court cases, the civil court had looked at the organizational structure of the church involved to determine the property dispute. If that rule were to be applied to the facts in *Church of Palm Springs*, the general church might -- and the "might" rather than a "would" is important -- win.

The *Church of Palm Springs* court then characterized the three cases this way: "As already indicated, the controlling questions in those cases *turned on* disputes directly involving religious doctrine or church polity, organization or structure." (*Church of Palm Springs, supra*, 89 Cal.App.3d at p. 924, italics added.)

Again, with all respect for the *Church of Palm Springs* panel, that statement was not correct. None of those cases "turned" on "religious doctrine" as such, except insofar as *organizational structure* is seen to be itself a matter of religious doctrine. We note, though, that there is only one case in our entire survey of the case law in the area where organizational structure was an actual matter of *controversy*.

(*Concord Christian Center v. Open Bible Standard Churches* (2005) 132 Cal.App.4th 1396 (*Concord Christian*).) And in that case the appellate court easily surmounted the issue without involvement in religious dogma, but that case is getting ahead of ourselves. In any event, it appears that the *Church of Palm Springs* court was conflating religious controversy with "polity, organization or structure."

From this one might expect the coup de grace to be administered: The *Church of Palm Springs* court would flat out repudiate the principle of government as a guiding principle for civil courts, look to title, note that title was in the hands of the local church corporation, and affirm the judgment. But no. Mid-paragraph, the *Church of Palm Springs* court changed direction, and instead of repudiating the principle of government, embraced it in a kind of odd way, engaging in the sort of lengthy exploration of internal church structure that the California Supreme Court had undertaken in *Committee of Missions*. That is, the *Church of Palm Springs* court devoted the latter half of page 924 to making the point that, organizationally, the departure of the local church had been accepted -- practically ratified -- by the general church. (See *ibid.* ["When Presbytery acted on June 8, 1968, to suspend the powers of the Community Church session effective June 30, 1968, Community Church had *already* terminated its relationship with UPCUSA and withdrawn from the Presbyterian denomination. It is undisputed that a *local church within UPCUSA may withdraw and terminate its affiliation*. . . . Community Church has renounced its affiliation with the Presbyterian denomination and does not claim to be a Presbyterian

church. . . . Community Church ended that controversy when it withdrew from UPCUSA and terminated its relationship with the Presbyterian denomination." (*Palm Springs, supra,* 89 Cal.App.3d at p. 924.)

In short, the *Palm Springs* case was not being decided by simple title, but by the sort of technical twist on the loser's position that would have made Shakespeare's Portia proud: In effect, the *Palm Springs* court said to the general church: Oh, so you want this case decided by your own organizational rules, do you? Well fine. Under your own rules a local church may withdraw, and you are therefore stuck with that result.

At this point in the opinion (beginning with page 925), the organization of the *Church of Palm Springs* opinion again changes gears (the opinion is written without any subheadings), with the court going into the mode of batting down various arguments raised by the appellants, i.e., the general church.

First was an argument that a judgment for the local church would infringe on the general church's free exercise rights. (*Church of Palm Springs, supra,* 89 Cal.App.3d at p. 925.) That one was easy, the court simply needed to allude to the various U.S. Supreme Court cases that said it was all right to resolve "property disputes involving religious organizations so long as that resolution does not depend on the court's attempting to resolve ecclesiastical controversies." (*Ibid.*)

Then came the argument that a "hierarchical structure" meant "as a matter of law," that local church property was to be "held in trust for the general church." (*Church of Palm Springs, supra,* 89

Cal.App.3d at p. 925.) The court waded into the *Wheelock* case and announced that the *Wheelock* rule "in fact supports the position of Community Church." (*Id.* at p. 926.) The court referenced the language in *Wheelock* that had noted that the *members* of both churches that had split by the higher level of organization "'were beneficiaries of the trust before the Presbytery divided the church and in justice and equity must stand in the same position after division.'" (*Palm Springs, supra*, 89 Cal.App.3d at p. 926.) Hence, according to the *Palm Springs* court, "In essence what the [*Wheelock*] court was saying was that the directors or trustees of the corporation hold title to the property of the church in trust for the local church and every member thereof." (*Ibid.*) And then later, "Thus, properly read, *Wheelock* stands for the proposition that the property of a local church, even one that is part of a general church organization of hierarchical structure, is held in trust by the religious nonprofit corporation for the benefit of the local church congregation." (*Palm Springs, supra*, 89 Cal.App.3d at p. 927.)

Again, with respect to the *Church of Palm Springs* court, we must disagree with its reading of *Wheelock*. The *Church of Palm Springs* court confused the principle by which the *tribunal of a hierarchical church* had *itself* decided to apportion the fund in *Wheelock* with the rule of decision used by the court in deciding the *Wheelock* case. The rule of decision of the court in *Wheelock* was *deference* to the Presbyterian tribunal, not the (radical) idea that, as a matter of law, a local congregation of a hierarchically-structured church necessarily holds local property in trust for members of the congregation.

Next the *Church of Palm Springs* opinion addressed language in *Committee of Missions*, then *Horsman*, then *Watson* itself, all involving holding property in trust. This section of the *Church of Palm Springs* opinion is not the clearest in the opinion (there seems to be a kind of partial dialog with the appellant's briefs), but it appears that the main point is that none of those cases had embraced a "trust theory" of hierarchical structure. And of course that point was thoroughly correct, since, as the *Church of Palm Springs* court itself recognized, *Watson* had indeed broken with the implied trust theory that had dominated resolution of disputes since the early 1800's, and which had represented the British rule. Here is the passage: "Moreover, the effect of *Watson v. Jones* was the rejection or repudiation of the very doctrine that appellants appear to invoke -- the implied trust doctrine holding that church property was the subject of an *implied trust* in favor of those who adhered to the faith of the founders of the church." (*Church of Palm Springs, supra*, 89 Cal.App.3d at p. 928, italics added.)

Obviously there was some confusion, either in the briefs or by the *Church of Palm Springs* court, between Lord Eldon's discredited implied trust theory and the principle of government approach that *Watson* had used to replace it.

Indeed, there is a good case to be made that the confusion was the product of poor briefing by the appellant general church. Apparently the general church there had advanced a tedious argument contending for an implied trust "with their contentions based on the First Amendment and the *Serbian Orthodox* and *Watson v. Jones* decisions" -- so much so

that it was "difficult to organize" those arguments "for meaningful discussion." (*Church of Palm Springs, supra*, 89 Cal.App.3d at p. 929.)

4. Barker

In a moment, the decision in *Church of Palm Springs* had reversed about a hundred years of state and federal Supreme Court precedent, and disturbed what had been a stable legal universe in California involving the methodology by which California state courts would decide church property disputes. It had recast *Wheelock* for as standing for the principle of majority rule, and consigned *Horsman Watson* and *Serbian Orthodox* to the bin of cases solely confined to religious controversies qua religious controversy.

The next intermediate appellate decision regarding church property, *Barker*, built on the *Church of Palm Springs* foundation, but expressly did not examine it: It was prepared to accept the "comprehensive analysis" contained in *Church of Springs* at face value. (See *Barker, supra*, 115 Cal.App.3d at p. 614 ["We next turn to California law to determine what legal principles California courts employ to resolve disputes over church property. Fortunately, we have the benefit of the comprehensive analysis of the problem in the court's opinion written by Justice Kaufman in" *Church of Palm Springs*].) That is, the *Barker* court flat out rejected the principle of government approach (which it called "Hierarchical Theory") because the *Church of Palm Springs* "opinion places California law squarely in the neutral-principles camp." (*Barker, supra*, 115 Cal.App.3d at p. 614.)

The *Baker* court next rejected implied trust theory, but that was easy to do since the four U.S. Supreme Court cases preceding *Church of Palm Springs* had done so. (See *Barker, supra*, 115 Cal.App.3d at pp. 615-620 [ending with observation that the difficulties of the theory "remain insurmountable"].)

The *Barker* court reached its result by plying the four-factor neutral principles approach, which it considered "Express Trust" theory. (See *Barker, supra*, 115 Cal.App.3d at p. 620-624.) Applying the four factors, the *Barker* court held that three of four disaffiliating Episcopal congregations in the Los Angeles Diocese -- yes, the very same diocese who is the appellant here -- were entitled to have control of the local church property, because in the cases of those local parish corporations, they took title to the property before the 1958 local diocesan canon which asserted that local Episcopalian parishes held property in trust for the diocese. The property of the fourth corporation, however, was indeed held in trust because the articles of incorporation of that particular corporation acknowledged a trust. (See *id.* at pp. 625-626.)

The four-factor neutral principles approach requires an examination of not just the deeds and articles of incorporation, but also of the constitutions, canons and rules of the general church. Usually, of course, a hierarchical church is going to have at least a canon or rule, if not a full-scale provision in its constitution, subordinating property of local church corporations to itself. By the time Barker was decided, the 1958 local diocesan canon had been promulgated. Why didn't it make a difference?

The issue was addressed on page 624 of the official reporter: The 1958 diocesan canon wasn't around when the three winning church parishes were incorporated, so there was "nothing . . . to create an express trust in local church property in favor of the general church." (*Barker, supra*, 115 Cal.App.3d at p. 624.)

It bears noting that Justice Roth dissented in *Barker*, and specifically recognized that, under the U.S. Supreme Court decision in *Jones*, the "hierarchical approach would also be acceptable." (*Barker, supra*, 115 Cal.App.3d at p. 627 (dis. opn. of Roth, J.).) He then pointed out that the majority "accomplish[ed]" the change from hierarchy to neutral principles "by virtue of the fact that the State of Georgia" had "availed itself of the neutral principles theory" together with the "assertion" that the *Church of Palm Springs* court had placed California in that "'camp.'" (*Ibid.*) For Justice Roth, the *Church of Palm Springs'* assertion was an "overstatement," though he did not elaborate. (*Ibid.*)

Turning to the merits, Justice Roth proposed that whether neutral principles or hierarchy should apply would "depend on the circumstances" (*Barker, supra*, 115 Cal.App.3d at p. 627 (dis. opn. of Roth, J.)), and the circumstances of the case were such that even if "no express trust affirmatively" appeared, the hierarchical structure of the Episcopal Church should be "the controlling consideration." (*Id.* at p. 628.)

F. Statutory Developments

1. Section 9142

The next legal development in California's law in this area was statutory, namely the addition of sub-

divisions (c) and (d) to section 9142. (See Stats. 1982, ch. 242.)

There is no indication that in doing so the Legislature had any intention of codifying *Barker*, or of overturning California Supreme Court precedent as found in the *Baker-Wheelock* line. The legislative history[8] of the addition to section reveals a rather different intent altogether: To make a technical correction to earlier (and pre-*Barker*) legislation (specifically, Stats. 1980, ch. 1324), which had *precluded* California's Attorney General from enforcing charitable trusts of religious corporations but left no one else with the ability to enforce such a trust either. That earlier legislation had left a "void" as far as the enforcement of property held in trust by religious corporations, and the 1982 additions to section 9142 were part of a package to "fill" that "void." (See, e.g., Policy Committee Memorandum re Bill SB 1178, Amended 3-8-82, from the Assembly Judiciary Committee, at p. 2 ["First Freedom, the sponsor of this bill, states that section one of the bill is intended to 'fill a void' left by the passage of SB 1493 (Petris), Ch. 1324, Statutes of 1980."].)

In more specific terms, the origins of the legislation that led to subdivisions (c) and (d) in section 9142 can be traced to events described by the court in *People ex rel. Deukmejian v. Worldwide Church of God, Inc.* (1981) 127 Cal.App.3d 547 (*Deukmejian v. WCG*).

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[8] The court has already granted a request by parties in a related case to take judicial notice of the legislative history of Senate Bill 1178 which originated the addition of subdivisions (c) and (d) to section 9142.

In that case "certain members" of a "hierarchically structured" church contacted a New Jersey law firm "expressing their concern that officials of their Church might be guilty of malfeasance and misfeasance with respect to Church affairs." (*Deukmejian v. WCG, supra,* 127 Cal.App.3d at p. 550, and 550, fn. 2.) The New Jersey firm contacted a California lawyer for assistance.

The California lawyer determined that the complaining church members themselves had no "standing to sue," so he contacted the California Attorney General's office whose duties at the time included "surveillance of charitable trusts." (*Deukmejian v. WCG, supra,* 127 Cal.App.3d at p. 550) The Attorney General's office then "deputize[d]" the California lawyer as a "special deputy attorney general." The office and the California lawyer took the position the church's "property, assets and records were 'public' and that they were always and ultimately in the custody of and subject to the supervision of the courts upon application of the Attorney General." (*Id.* at p. 551.) Based on that theory the California Attorney General's office and the California lawyer were successful, for a while, in imposing a receivership on the church on the ground that the "Church property was being misappropriated." (*Id.* at p. 552.)

However, as the receivership continued into the first half of 1979, the church obtained relief in the Legislature. Senator Nicholas Petris introduced Senate Bill 1493 which repealed the statutory basis (former section 9230) on which the Attorney General had acted. Old section 9230 was replaced with new legislation (also numbered section 9230) which provided, with certain exceptions, that "the Attorney

General shall have no powers with respect to any corporation incorporated or classified as a religious corporation under or pursuant to this code." (See *Deukmejian v. WCG, supra,* 127 Cal.App.3d at p. 554, fn. 5.) Senator Petris' bill became law and was signed by the Governor in July 1980.

The *Deukmejian v. WCG* court would later note that "[e]ven though the legislation was not to become effective" until about a year later, "the Attorney General very wisely viewed that legislation as a declaration of public policy and a legislative objective to prevent the state from engaging in the very type of litigation" the Attorney General had brought. (*Deukmejian v. WCG, supra,* 127 Cal.App.3d at p. 555.) These events were memorialized by the court when the California lawyer sought fees from the church for having imposed a receivership on the church, the denial of which the appellate court affirmed, noting that the whole receivership enterprise was "from the inception constitutionally infirm and predestined to failure." (*Id.* at p. 558.)

Senate Bill 1493 in 1980, which had proved decisive in the *Deukmejian v. WCG* litigation, was the stated reason for 1982's Senate Bill 1178, also carried by Senator Petris. The legislative history of the bill shows that the original sponsoring organization was First Freedom (a fact noted, for example, on the Senate Judiciary Background Information form ("SB 1178 (Petris)").

According to a memo from that organization (attached to the Judiciary Committee Background Information form), section 1 of the bill, amending section 9142, was to allow *some* litigation to enforce charitable religious trusts, since the earlier bill had

stripped the Attorney General of that authority: "The Attorney General used the term 'charitable trust' as a means of arrogating unto [*sic*[9]] himself virtually absolute power over all charitable organizations (including churches). SB 1493 deprived him of such overreaching authority . . . . [¶] However, while SB 1493 impliedly addressed the question of what a 'charitable trust' is not, it did not address what a 'charitable trust' really is." There really is such an animal, and attorneys who litigate in the area of gifts and bequests feel it's a void that should be filled." (Memorandum by Brent Barnhart to Burt McChesney, attached to Senate Judiciary Background Information form ("SB 1178 (Petris)").)

The void to be filled (and here we meet again the spirit of Justice Harlan's concurring opinion in *Hull Church*) was the then-inability of church *members* to seek redress when their contributions were used in a manner contrary to the specific purpose for which the property was contributed. (See letter from Brent A. Barnhart, Legislative Advocate, to Governor Edmund G. Brown, on First Freedom stationary dated June 7, 1982 at p. 1 ["SB 1178 accomplishes two things pertaining to court actions to enforce the terms of donations to a church: [¶] (1) It defines when gifts and contributions to a church create an enforceable charitable trust; and [¶] (2) It creates a new cause of action for church members who have

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[9] The King James era archaism is arguably in keeping with the religious liberty purposes of sponsoring organization, "First Freedom," whose April 16, 1981 newsletter is part of the legislative history materials. (See First Freedom newsletter of April 16, 1981, p. 1 ["those concerned with religious freedom and the rights of churches, look to FIRST FREEDOM for support"].)

contributed money or property to their church for a specific purpose, where their contribution has been used in a manner contrary to the specific purpose for which it was contributed." (Original underlining.))

According to the same letter, the bill was the "product of extensive discussion and compromise between representatives of several religious organizations" which included the Catholic Archdiocese of Los Angeles, the Jewish Community Relations Council of Los Angeles, and the Pacific Union Conference of Seventh-Day Adventists as well as First Freedom. (*Ibid.*)

It is apparent from the legislative history of Senate Bill 1178 that the Legislature's main focus was on the problem of what remedies individual contributors to religious corporations, no matter how ecclesiastically organized, might have for the misuse of their "specific purpose" contributions. The April 16, 1981 newsletter from First Freedom (on page 2) contained in the legislative history also contains a description of Senate Bill 1178, elaborating thusly on the issue of specific purpose contributions, and tying the effort to the Attorney General's perceived overreaching in the *Deukmejian v. WCG* case: "Senator Nicholas Petris, author of SB 1493, has introduced clean-up legislation which should lay to rest further misuse of the term 'charitable trust'. . . . [¶] SB 1178 declares what a charitable trust is, with respect to religious organizations. Enforceable charitable trusts will be those expressly established by donors in gifts to churches, *on condition that the gifts be used in specific ways*." (Original underlining; italics added.)

However, it must be noted that (as one might expect given the origins of SB 1493 enacting a new section 9230), the power of an individual contributor to enforce a specific purpose gift against a religious corporation was somewhat restricted. (Recall from *Deukmejian v. WCG, supra,* 127 Cal.App.3d 547, that the California attorney sought out by the New Jersey law firm concluded that individuals had no standing to enforce their allegations of malfeasance.) A writing at the time of the donation expressly creating a trust would be required.

As we have noted, one looks in vain in the legislative history of subdivisions (c) and (d) for any reference to the *Barker* decision (much less any intent to codify it), or any intent to reverse the common law of California dealing with church property disputes arising in the context of a struggle over property between a local church and a general church that was the subject of so much California Supreme Court common law jurisprudence. Any impact that the legislation may have had on that common law must therefore be by operation of the *plain language* of the statute, because there is certainly no indication of any legislative intent to do so. As our Supreme Court has declared, courts should not interpret a statute to "alter the common law" under there is "language or evident purpose of the statute" manifesting "a legislative intent to repeal" a common law rule. (*California Assn. of Health Facilities v. Department of Health Services* (1997) 16 Cal.4th 284, 297.[10])

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[10] Here is the complete text of the relevant passage from *California Assn. of Health*: "As a general rule, '[u]nless expressly

With that principle in mind, let us now turn to the language of section 9142.

Subdivisions (c) and (d) of section 9142 provide:

"(c) No assets of a religious corporation are or shall be deemed to be impressed with any trust, express or implied, statutory or at common law unless *one* of the following applies:

"(1) Unless, and only to the extent that, the assets were received by the corporation with an express commitment by resolution of its board of directors to so hold those assets in trust.

"(2) Unless, and only to the extent that, the articles or bylaws of the corporation, *or the governing instruments of a superior religious body or general church of which the corporation is a member*, so expressly provide.

"(3) Unless, and only to the extent that, *the donor expressly imposed a trust, in writing, at the time of the gift or donation.*

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provided, statutes should not be interpreted to alter the common law, and should be construed to avoid conflict with common law rules. . . . "A statute will be construed in light of common law decisions, unless its language "'clearly and unequivocally discloses an intention to depart from, alter, or abrogate the common-law rule concerning the particular subject matter . . . .'" Accordingly, ' [t]here is a presumption that a statute does not, by implication, repeal the common law. . . . Repeal by implication is recognized only where there is no rational basis for harmonizing two potentially conflicting laws.' . . . Thus, the Department's position that the duties of long-term health care licensees are nondelegable under section 1424 is in accord with the common law of licensee liability, and *we will presume it to be correct unless the language or evident purpose of the statute manifest a legislative intent to repeal the rule.*" (*California Assn. of Health, supra*, 16 Cal.4th at p. 297, italics added.)

"(d) Trusts created by paragraph (2) of subdivision (c) may be amended or dissolved by amendment from time to time to the articles, bylaws, or *governing instruments creating the trusts.* However, nothing in this subdivision shall be construed to permit the amendment of the articles to delete or to amend provisions required by Section 214.01 of the Revenue and Taxation Code to a greater extent than otherwise allowable by law." (Italics added.)

The major phrases of the statute are important: The very footfalls of *Watson's* reference to "subordinate member of some general church" echo in the statutory phrase "superior religious body or general church." We note:

First, there are three possible ways for a religious charitable trust to be enforced, any "one" of which will do. This aspect is important because it means that there is more than one way a trust can be impressed on property held by a religious charitable corporation. The most obvious way, of course, is the one described in subdivision (c)(3): an individual donor expressly imposing a trust, in writing, on his or her donation.

However, under the canon of statutory construction that courts should not construe words in statutes to be redundant, the way described in subdivision (c)(2) -- a "superior religious body or general church" expressly providing for a trust -- must be considered meaningfully different from the imposition of a trust by an individual donor in writing as described in subdivision (c)(3).

Second, one must note the disjunctive "*or*" that separates the phrase, "the articles or bylaws of the corporation" from the words "governing instruments

of a superior religious body or general church." Under the ordinary meaning of the word "or" -- either of two alternative are sufficient -- it makes no difference if the "bylaws or articles" in a *church corporation* holding *title* to property expressly provide for a trust as long as the "governing instruments" of the "superior religious body or general church of which the corporation is a member" so provide.

Third, one should note the phrase "superior religious body or general church" in conjunction with the word "or." The phrase clearly contemplates an intent by the Legislature to insure that hierarchically organized churches had the power to trump "local corporations" *when* the local corporation was a "member" of the hierarchically-organized church as to whether an enforceable trust might exist. If the Legislature had wanted the local church corporations to have the power to prevent hierarchically-organized churches from imposing a trust on the property of the local church corporations, it would not have used the word "or." The Legislature would have said "and," thus requiring *both* local corporation and general church agreement.

Finally, we come to the critical phrase in subdivision (d), "governing instruments creating" the trust. The phrase raises the question of what, exactly, are those "governing instruments" that "create" the trust.

Now the importance of subdivision (c)(3) becomes apparent. Governing instruments can certainly, under subdivision (c)(3), include the "writing," made by the donor at the time of the gift or donation. That is a logical reading of subdivision (c)(3).

However, since subdivision (c)(3) is not the exclusive way by which a trust may be enforced, the natural reading of subdivision (c)(2), when read together with subdivision (c)(3), is that "governing instruments" as used in the more general subdivision (c) *also* includes the "governing instruments of the superior religious body or general church" as the phrase is used in subdivision (c)(2). And that means that, yes, it is the general church or superior religious body that, indeed, creates the trust under subdivision (c)(2).

Of course, that very scenario -- the general church and not the local church as the actual trustor of the trust -- had been invited by the United States Supreme Court in *Jones*. Recall that *Jones* suggested an alternative to modification of deeds or corporate charters to insure that "the faction loyal to the hierarchical church will retain the church property." (*Jones, supra*, 443 U.S. at p. 606.) Specifically, the alternative was that the "constitution of the general church can be made to recite an express trust in favor of the denominational church." (*Ibid.*) The idea that a hierarchical general church could expressly provide in *its* rules that the property of a local church affiliated with that denominational church was held in trust for the denominational church thus does not seem to be as outlandish as the *California-Nevada* court would later find it.

We need not (and do not) in this opinion address issues arising out of subdivision (c)(3) scenarios (i.e., an individual suing to impress a trust based on a specific purpose donation). What is abundantly clear, however, for our purposes in this case is that in a hierarchically organized church, the "general

church" *can* impress a trust on a local religious corporation of which the local corporation is a "member" *if* the governing instruments of that superior religious body so provide.

In the case before us, the enactment by the national Episcopal Church in 1979 of Canon I.7(4) readily qualifies as a "governing instrument" expressly providing for a trust on property held by local church corporations. The language of the statute *perfectly* conforms with the result that would be otherwise required under a flat-out "principle of government" approach under *Watson* and the *Baker-Wheelock* line of California Supreme Court cases. And the *Barker* case becomes readily distinguishable because it was decided before Senate Bill 1178, with its contemplation of express trusts to be found in the "governing instruments" of a "general church."

Also, because of Canon I.7(4), we are spared in this case the thorny constitutional issue of whether section 9142 might be unconstitutional as applied to a hierarchically organized church whose governing instruments *didn't* have any express trust provision on the theory that the hierarchically organized church's own religious freedom to organize itself as *it* deemed fit is being subverted by the statute. We do not express any opinion on that question.

Now, the counter-analysis to what we have determined to be the plain language of section 9142, subdivisions (c)(2) and (d) is the proposition that it would be counter to ordinary state law trust principles, which in California start with the presumption that a trustor creating a trust retains the power to revoke it. To get ahead of ourselves, that would be

the rationale latter used by the court in *California-Nevada, supra,* 121 Cal.App.4th 754.

There is nothing wrong with the trustor-may-revoke rationale of *California-Nevada* -- after all that is what subdivision (d) literally provides for -- just as long as one is clear about who, exactly, *is* the trustor. But, as we have just seen, a "general church" *is*, functionally, the trustor is a subdivision (c)(2) situation.

But that is only common sense anyway: In a general church that is hierarchically-structured, people do not organize local congregations as *substantively* independent entities. They organize local congregations in the context of membership in the overall church. In contrast to congregational organization, hierarchical organization makes the overall church the primer mover.

2. The Title Presumption of Evidence Code Section 662

As we shall see when we discuss *Korean United's* treatment of *Church of Palm Springs*, one can detect in *Church of Palm Springs* a very strong emphasis on legal title. Indeed, *Korean United* would ascribe the rationale of *Church of Palm Springs* almost entirely to a reliance on "bare title." (See *Korean United, supra*, 230 Cal.App.3d at p. 498 ["Focusing instead on *bare title* to the property . . . ."] (italics added).)

That raises the question of how the title presumption in California law, now codified as section 662 of the Evidence Code, fits in church property

disputes of this sort.[11] It is true that section 662 was enacted in 1965, after the Supreme Court's *Baker-Wheelock* line of cases. But there is nary a hint that the statute was enacted to change the common law involving church property disputes, in which, typically, *title* is never really disputed, only the *use* of the property. The Law Revision Commission Comment to the legislation points out, "Section 662 codifies a common law presumption recognized in the California cases." (29B West's Annot. Evid. Code, p. 210.) And that presumption had been around prior to the *Baker-Wheelock* line. (E.g., *Roman Catholic Archbishop of San Francisco v. Shipman* (1889) 79 Cal. 288, 296 ["It must be presumed that Alemany held possession under the legal title vested in him by the deed. . . ."].)

Moreover, at least in this case, any arguable idea that section 662 somehow required departure from the result required by principle of government rule is untenable for three reasons.

First, section 9142 is a more specific statute, as well as a later one, and trumps any conflict with Evidence Code section 662. (See *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 476-477.) If the diocese and national church have valid claims under the plain language of section 9142, the more general Evidence Code section 662 cannot block them.

Second, particularly when read in conjunction with section 9142, Canon I.7(4) *is* clear and convinc-

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[11] The one-sentence statute provides in its entirety: "The owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof."

ing evidence rebutting any presumption that the beneficial interest in the local church property is solely controlled by the local parish corporation.

And third, and most importantly, Evidence Code section 662 is substantially irrelevant to the dispute in this case. In precise terms, the diocese's and national church's claims are not that *they* have "beneficial title" to the property, but that the party who *does* have beneficial title, the local parish corporation, holds that beneficial title in trust for them.

And with that we now turn the decisions that followed after *Church of Palm Springs* and *Barker*.

G. The Latter-Day California Intermediate Appellate Decisions in the Wake of Church of Palm Springs, Barker, and Section 9142

Since *Barker* was decided and section 9142 was enacted, four cases from California's intermediate appellate court have directly dealt with disputes over church property in a way that implicates *Watson* and the *Baker-Wheelock* line's principle of government approach: *Korean United*, *supra*, 230 Cal.App.3d 480; *Singh v. Singh* (2004) 114 Cal.App.4th 1264 (*Singh*); *California-Nevada*, *supra*, 121 Cal.App.4th 754; and finally, *Concord Christian*, *supra*, 132 Cal.App.4th 1396.[12] A fifth case, *Berry v.*

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[12] One other case deserves mention as rounding out the law over church property disputes though it did not implicate the principle of government rationale of *Watson* and the *Baker-Wheelock* line. *Vukovich v. Radulovich* (1991) 235 Cal.App.3d 281, another chapter in the history of the Serbian Orthodox Church, is not *directly* significant for our purposes since its main point was that the trial court was correct in sustaining a demurrer brought by a minority of a local congrega-

Society of Saint Pius X (1999) 69 Cal.App.4th 354 (*Saint Pius X*), is also significant because, although it did not deal with a church property dispute as such (it dealt with who was the proper successor in a corporate sole), it marked a rediscovery of the Supreme Court's *Wheelock* opinion and (in our opinion) a correct reading and application of that opinion.

Also, while all four direct dispute cases *professed* to follow the four-factor neutral principles approach, at least two (*Guardian Angel* and *California-Nevada*) cannot be reconciled with each other. When we examine them, we also find that two cases are consistent with the *Watson* principle of government approach, and in fact *Korean United* actually used that approach as an alternative rationale. (The other is *Guardian Angel*.) One isn't consistent (*California-Nevada*), and one is neutral (*Singh*).

1. Korean United

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tion opposing reaffiliation with the "Mother Church." However, the case does illustrate the point that looking to "by-laws" to resolve a property dispute (as in "neutral-principles analysis") may not always prevent a civil court from entangling itself in religious controversy. In *Vukovich*, the congregational minority made an argument that, on its surface, was merely about voting procedure under the by-laws. The minority asserted that the votes of about 20 to 30 members of the congregation should have been counted on the vote on reaffiliation, but the board had improperly refused to count them. (*Vukovich, supra*, 235 Cal.App.3d at pp. 286-287.) The trial court refused to entertain their suit i.e., sustained a demurrer because the court lacked jurisdiction, noting that "this dispute clearly involves an essentially ecclesiastical dispute" (*Vukovich, supra*, 235 Cal.App.3d at p. 290.) Does that mean if property *were* involved the court would have had to wade into the by-laws? We need not deal with that problem in this case.

Against the backdrop of *Palm Springs* and *Barker*, *Korean United* represents a kind of counter-reformation, in which California courts were willing, once again, to defer to the highest governing tribunals of a church.

Korean United involved a local Presbyterian congregation, incorporated as a religious nonprofit corporation. A "schism" developed within the local congregation over the views of its pastor; the pastor had the support of the majority of the congregation, and the pastor sought to disengage himself and his supporters from the national Presbyterian church; the "dissident faction" went elsewhere to worship, but the local presbytery (equivalent to a Episcopal diocese) declared this "'exiled'" faction to be the "'true Church'" congregation (like *Horsman*, the court in *Korean United* showed no reticence to use the phrase), the local pastor fired the first shot with a quiet title action, followed by a cross-complaint from the local presbytery for enforcement of an express trust. The trial court followed *Barker* and held there was no trust, declaring the local congregation corporation in control of the church property.

The appellate court reversed. The court was nice to the earlier *Barker* decision: That opinion represented, at the time, "not only the latest, but the most definitive appellate consideration of the legal principles concerning church property disputes in California." (*Korean United, supra*, 230 Cal.App.3d p. 496.)

That said, the *Korean United* headed off in a direction fundamentally inconsistent with *Barker*. First of all, unlike *Barker* (or *Church of Palm Springs*), *Korean United* became the first California appellate court to recognize that *Jones* was *permis-*

sive in its articulation of neutral principles analysis. State law could use the four-factor neutral principle test, and that was okay, but states could also defer to the rulings of the "authoritative ecclesiastical body" at least as far as religious controversies were involved. Here is the key passage: "The conclusion to be drawn from *Jones* is that a state court *may* resolve disputes over church property through use of neutral principles of law, focusing on sources such as deeds to church property, articles of incorporation, bylaws, state statutory law and the constitution and rules of the general church; but if a civil court is required to resolve a religious controversy, it must then defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body." (*Korean United, supra*, 230 Cal.App.3d at p. 498.)

The *Korean United* also confronted the ruling in *Church of Palm Springs* and politely and obliquely criticized it: That is, the *Korean United* said that the *Church of Palm Springs* court "accepted" the "invitation to resolve church property disputes through application of neutral principles of law" (*Korean United, supra*, 230 Cal.App.3d at p. 498) but noted its ruling was based on a rather constricted focus on bare title: "Focusing instead on *bare title* to the property, the [*Palm Springs*] court upheld the trial court's ruling that ownership and possession of the disputed church property remained with the local church." (*Ibid.*, our italics, citing *Church of Palm Springs, supra*, 89 Cal.App.3d at pp. 923, 933).

Later in the opinion, however, the *Korean United* court made it clear that the trial court had "misapplied" the four neutral principles factors to rule in favor of the local church, because the trial court "im-

properly looked at each of the factors separately to see if an express trust was present in any one of them. However, the court, as a matter of law, should have looked at these factors *collectively*, asking whether under the totality of the circumstances, they required a finding of express trust." (*Korean United, supra*, 230 Cal.App.3d at pp. 509-510, italics added.)

The implication of *Korean United* is clear, if politely stated: If the trial court had erred in *Korean United* by looking at the four-factors separately, rather than collectively, then how much more did the *Church of Palm Springs* court err in only looking at one factor individually, that is, "bare title." And if there is one mistake the *Korean United* court was determined not to make, it was to constrict its focus to one factor separately and base its decision to reverse only that factor.

Structurally, one can divine from *Korean United* a host of parallel rationales, all of which were rolled up into a ball and hurled toward an overwhelming resolution: The trial court erred.

The first rationale was based the re-discovery of the principle of government approach. Justice Fred Woods and his colleagues became the first jurists on the intermediate appellate court in decades to apply the rationale of the controlling precedent of the state's highest court to a church property dispute. In a section of the opinion citing *Wheelock*, *Horsman*, *Kedroff*, and *Serbian Orthodox* (see *Korean United, supra*, 230 Cal.App.3d at pp. 500-503), the *Korean United* court held that the trial court had erred in "fail[ing] to defer" to the decision of the presbytery, which was authoritative under the Presbyterian con-

stitution known as the "Book of Order." (*Korean United, supra*, 230 Cal.App.3d at p. 502.)

However, as an independent alternative rationale the *Korean United* court then down the line on each factor of the four neutral principles (see generally *Korean United, supra*, 230 Cal.App.3d at pp. 503-513), including the operation of the Corporations Code sections that folded the rules of the national church into the bylaws of the local corporation controlling the property, and creating the presumption of an express trust. (*Id.* at pp. 503-509.) Another rationale was the nature of the deeds, because the Presbytery had held the property in its own name before a 1983 loan. (*Id.* at pp. 509-510.) Further, the articles of incorporation had expressly noted a statute that itself recognized the power of "national" bodies over "subordinate" ones (old Civ. Code § 605dd, part of stats 1939 ch. 148 § 2, p. 1262). (See *Korean United, supra*, 230 Cal.App.3d at p. 511.)

And, finally, there was the national constitution of the Presbyterian Church embodied in its Book of Order that had been amended in the wake of *Jones* to provide that local congregations hold property in trust (*Korean United, supra*, 230 Cal.App.3d at p. 512).

2. Saint Pius X

About eight years after *Korean United*, the court in *Saint Pius X, supra*, 69 Cal.App.4th 354 had occasion to confront the issue of church property disputes in the context of the arcane subject of corporate soles (see Corp. Code, §§ 10000 through 10015).

The classic model for a corporate sole is an Archbishop in the Roman Catholic Church who is

himself a corporate sole, owning property in a given diocese. (E.g., *Roman Catholic Archbishop of San Francisco v. Superior Court* (1971) 15 Cal.App.3d 405, 411 ["The Archbishop is a corporation sole under the California Corporations Code . . . ."]; see also Nadborny, *"Leap of Faith" Into Bankruptcy: An Examination of the Issues Surrounding the Valuation of a Catholic Diocese's Bankruptcy Estate* (2005) 13 Am. Bankr. Inst. L. Rev. 839, 848 ("Nadbourny Bankruptcy Article").) The basic idea is that a single individual, as a subordinate in a hierarchically organized church, can own church property in a given area yet the *church* still ultimately controls the property by controlling the officeholder. (See Nadbourny Bankruptcy Article, *supra*, 13 Am. Bankr. Inst. L. Rev. at pp. 848, 850 ["The corporation sole was developed in England for the express purpose of passing the use of church property to successive generations at the parish level in order to prevent the monarch from seizing church properties upon the death of the bishop . . . . [¶] The fact that legal title rests in the hands of the bishop as a corporation sole does not change the Canonical ownership as ordained by the Catholic Church."].)

And it was precisely the problem of who exactly controlled a corporate sole that came to the fore in *Saint Pius X*. The case involved the followers of Archbishop Marcel Lefebvre, who in the words of the opinion, practice "Roman Catholicism as it existed before Vatican II," that is, they were an "independent" church. (*Saint Pius X*, *supra*, 69 Cal.App.4th at p. 358) A particular priest had formed a corporation sole in 1976. The original articles of incorporation provided that any vacancy would be made by the

"presiding Archbishop following the canons of the Roman Catholic Church." (*Ibid.*) However, the priest later attempted to change the manner of succession so that he would control his successor.

Not so, said the *Saint Pius X* court after the original priest died, and two successors, the original priest's hand-picked successor and one chosen by the larger church, vied for control of the church property: The appellate court focused on section 10010 of the Corporations Code governing corporate soles, which contemplates filling vacancies "'by the religious organization governed by the corporation.'" (See *Saint Pius X, supra*, 69 Cal.App.4th at pp. 366-367.)

The court first noted that a "'principal purpose of the corporation sole is to insure the continuation of ownership of property dedicated to the benefit of a religious organization which may be held in the name of its titular head.'" (*Saint Pius X, supra*, 69 Cal.App.4th at p. 367, quoting *County of San Luis Obispo v. Ashurst* (1983) 146 Cal.App.3d 380, 383 (*Ashurst*).) The court's central point was that, under California law, a corporation sole and the religious organization using the corporation sole as a legal device are *not* one and the same, so that the individual office holder does not control the succession to the property, it is, instead, the larger religious organization. (See *Saint Pius X, supra*, 69 Cal.App.4th at p. 370 [rejecting argument that original priest was "synonymous with the religious organization governed by the corporation"].)

The *Saint Pius X* court relied heavily on the *Ashurst* decision, which was an execution sale case, based on a debt for medical services provided by a

county to the wife of the office holder of a corporate sole. Writing for the court and quoting Blackstone, Justice Gilbert noted the "severability of title and ownership as between the unincorporated religious organization and the individual officeholder as the corporation sole." (*Ashurst, supra*, 146 Cal.App.3d at p. 384.) That is, "the assets must remain with the religious organization" once title has vested in the office holder as corporate sole. The county thus could not obtain a writ of execution on the assets of the corporation sole to satisfy the debt for medical services of the office holder's wife. (See *id.* at pp. 384-385.)

And, perhaps most important for our purposes, *Saint Pius X* continued with the rediscovery by California's lower intermediate level appellate courts of the proposition from *Wheelock* that religious corporations are not to be confused with the ecclesiastical bodies to which the corporation may be ecclesiastically subordinate. Here is the key passage from *Saint Pius X*, noting the original "convenience" language from *Wheelock*, and adding its own emphasis: "As the trial court observed, in the early case of *Wheelock* . . . (although not involving a corporation sole) the Supreme Court explained the relationship of a religious corporation to the congregation or church membership as follows: 'The . . . Code of this state . . . expressly permits religious bodies to incorporate, but such incorporation is only permitted as a convenience to assist in the conduct of the temporalities of the church. *Notwithstanding incorporation the ecclesiastical body is still all important.* The corporation is a subordinate factor in the life and purposes of the church proper. A religious corporation

. . . is something peculiar to itself. Its function and object is to stand in the capacity of an agent holding the title to the property, with power to manage and control the same in accordance with the interest of the spiritual ends of the church. . . . . "The legislature never means by granting or allowing such charters to change the ecclesiastical status of the congregation, but only to afford them a more advantageous civil status. """ (*Saint Pius X, supra*, 69 Cal.App.4th at p. 371-372 (italics added by *Saint Pius X* court).)

3. Singh

Singh, supra, 114 Cal.App.4th 1264, is significant for several reasons, not the least of which is that it was the first California case since the U.S. Supreme Court's 1979 *Jones* case to *systematically* review the federal precedents, including *Watson*, *Hull Church*, *Serbian Orthodox* as well as *Jones*. (See *Singh, supra*, 114 Cal.App.4th at pp. 1275-1281.) *Church of Palm Springs* had cited those cases to be sure, but it hadn't taken them on one by one. Perhaps because of that systematic review, the *Singh* court declared that it did not "necessarily agree" with the idea that certain California cases "decided in the 1950's" -- which certainly included both *Rosicrucian, supra*, 39 Cal.2d 121 and *Providence Baptist, supra*, 40 Cal.2d 55 -- could *not* "be reconciled with the United States Supreme Court holdings." (*Singh, supra*, 114 Cal.App.4th at p. 1281, italics added.)

The case is also significant because it was, functionally, a homage to *Providence Baptist*, that is, it yielded exactly the result that a reading of *Providence Baptist* would predict for a congregationally organized church using the principle of government.

The *Singh* case was, of course, a little more complex than that: It arose out of the claims of two competing boards (called "the Supreme Council") in a Sikh Temple. The losing slate essentially contended that they had been elected for life, in accordance with what they claimed was the proper Sikh tradition. The temple was congregationally organized, with an elected board, but (shades of the British Parliament in the time of Charles I) the otherwise detailed bylaws did not address the question of how long the board was to serve. Since the temple had organized itself as a "nonprofit religious corporation" subject to the rules set for in section 9110 et seq. of the Corporations Code (*Singh, supra,* 114 Cal.App.4th at p. 1282), the trial court had looked to section 9220, which provides that in the absence of any provision in the articles or bylaws, the term of office for a board of directors is one year. That determination, in effect, validated the claims of one slate of directors. The trial court also -- in the tradition of *Providence Baptist* that basically had done the same thing approved about 50 years before -- provided for a court supervised election.

The losing slate appealed; its core argument was that the trial court did not have *jurisdiction* to adjudicate the dispute at all. The bylaws did indeed make reference to "the Gurmat tradition" and the "Panj Pyaras" within the Sikh religion. (*Singh, supra,* 114 Cal.App.4th at pp. 1269, 1275.) It was in the context of discussing jurisdiction that the *Singh* court addressed the U.S. Supreme Court cases from the 1970's, as well as *Rosicrucian* and *Providence Baptist*. The court ultimately held that the trial court's decision to apply section 9220 was correct as

an application of neutral principles. There was no conflict between a neutral principles approach and the principle of government approach, because the principle of government of the Sikh temple *was* the local corporation (controlled by a board elected by majority rule) specified in the bylaws.

That point, however, requires a little more elaboration. There was no doubt in *Singh* that the controlling board was to be elected by majority rule. However, the court also noted that an article in the bylaws also made a particular priest the "chief consultant" in "matters related to the Gurmat and Sikh Rehatmaryada." (See *Singh, supra*, 114 Cal.App.4th at p. 1283, fn. 20.) Any "matter of doubt" was to be decided in a hierarchy of specified individuals. (*Ibid.*) That particular priest had not, however, spoken "regarding the term of office for the Supreme Council." (*Ibid.*) Hence, the *Singh* court took care, in justifying the trial court's decision to hold an election as *not* conflicting with any ecclesiastical hierarchy: "Further, the trial court did not determine who was qualified to be a member or who should be a member of the Supreme Council. Rather, the court's ruling that an election should occur resulted from the application of neutral principles of law and the Corporations Code when interpreting the bylaws. We stress that this case is significantly different from those situations where a religious authority has spoken on the issue. Not only has no religious authority spoken, but the Sikh Temple has no viable means of resolving this issue." (*Singh, supra*, 114 Cal.App.4th at p. 1285.)

In short, the *Watson* and *Baker-Wheelock* principle of government approach was beginning to recover

the respect it had lost with the *Metropolitan Baptist*, *Wilson*, *Church of Palm Springs* and *Barker* cases. The revival would continue with *Guardian Angel*.

4. Guardian Angel

Guardian Angel, *supra*, 118 Cal.App.4th 919 is an example of how neutral principles analysis which properly takes into account the written *constitution* of a hierarchical church (plus its canons and rules) will often yield the same result as a highest tribunal analysis. The case is also totally congruent with *Saint Pius X's* iteration of the *Wheelock* doctrine that church corporations serve as agents for churches that use them for its temporal ends.

The split between the local and the general church in *Guardian Angel* does not appear to have been theological at all. Rather, it was over financial accountability of the local church to the general church.

In *Guardian Angel*, a parish operated for about 39 years "in union" with the local diocesan bishop of the general church that operated "in union" with the Prime Bishop of the church back in Pennsylvania. (*Guardian Angel, supra*, 118 Cal.App.4th at p. 929.) When a new diocesan bishop was appointed in 1999, he requested the local priest to provide him certain financial information. The local priest failed to do so. A new local board of directors was soon elected, and that board severed ties with the general church, even to the point of hiring security guards to prevent those parishioners who remained loyal members of the general church from entering the premises. (The new board even refused donations from loyalist members. (*Guardian Angel, supra*, 118 Cal.App.4th

at p. 926.) The general church constitution, however, required diocesan approval of any newly elected board, but it was clear that this newly elected board never got it. (*Ibid.*) The trial court found the property belonged to the local church, but the appellate court reversed.

The *Guardian Angel* court began with the premise that courts "must" apply neutral principles analysis, for which it cited page 449 of the *Hull Church* case, but only quoted a fragmentary clause from the *Hull Church* opinion. Here is what the *Guardian Angel* court said: "In settling a church property dispute, such as that currently before us, courts must apply 'neutral principles of law, developed for use in all property disputes, which can be applied without "establishing" churches to which [the] property is awarded.' (*Presbyterian Church v. Hull* (1969) 393 U.S. 440, 449 [parallel cites omitted]." (*Guardian Angel, supra*, 118 Cal.App.4th at p. 930.)

From there, it identified the usual four factors used in neutral principles analysis. (*Guardian Angel, supra*, 118 Cal.App.4th at p. 930, citing *Barker, supra*, 115 Cal.App.3d 599, 621.)

It then quoted *Metropolitan Philip* v. Steiger (2000) 82 Cal.App.4th 923, 932 for the proposition that a general church's constitution "'can override any right the majority of a local congregation might otherwise have to control the local church property.'" (*Guardian Angel, supra*, 118 Cal.App.4th at p. 930.)

Having established that a general constitution can trump "any right the majority of a local congregation" have in local property, disposing of the case was an easy matter. The general church constitu-

tion required diocesan approval of a local church's board of directors before that board was authorized to act. So the actions of the board in "expropriat[ing]" the local property were not authorized. (See *Guardian Angel, supra*, 118 Cal.App.4th at pp. 927, 930)

By the same token, the constitution of the general church (actually, there were two, a 1958 and a 1998 version) was clear that a parish only owns property "so long as" it conforms to the rules of the general church, and any dissolution of a parish will cause the property to revert to the national church. (*Guardian Angel, supra*, 118 Cal.App.4th at p. 931).

The court further held that the reversion provision created a presumption of an express trust under section 9142, subdivision (c) of the Corporations Code. (*Guardian Angel, supra*, 118 Cal.App.4th at p. 931, citing *Korean United, supra*, 230 Cal.App.3d at p. 508, itself quoting from § 9142, subd. (c)(2).) That presumption was unrebutted by the mere fact that the *local* articles of incorporation did not "expressly" provide for reversion upon dissolution. (*Guardian Angel, supra*, 230 Cal.App.3d at p. 929.)

Our own previous explication of section 9142 is wholly consistent with that conclusion. We have already shown, because of the "or" in subdivision (c)(2), that a trust may be enforced under the statute even if there is no provision for it in the local church's bylaws or articles.

4. California-Nevada

Guardian Angel was filed in late April of 2004; by mid-August, however, another case would be added to those intermediate appellate opinions which came

down on the side of local control, *California-Nevada, supra*, 121 Cal.App.4th 754, sometimes also called "*St. Luke's*." Whereas *Saint Pius X* (quoting from *Wheelock*) and *Guardian Angel* (when provided for by the church constitution) had seen church corporations as distinct from and essentially subordinate to the religious organizations for which they were created, the *California-Nevada* court began with the local church corporation as the originating force behind subsequent property relationships.

Preliminarily, we must note that it is significant that the viability of the principle of government or so-called hierarchical approach was *not* before the court in *California-Nevada*. The court expressly noted that *neither party* was pressing such an approach and both parties operated on the assumption that it didn't apply. (*California-Nevada, supra*, 121 Cal.App.4th at p. 763 ["The parties here also appear to agree that the neutral principles of law theory is applicable in California, or at least that the hierarchical and implied trust theories do not apply."].)

It is clear from the opinion, though, that the *California-Nevada* court took it for granted that the "hierarchical theory" had been discredited, because that assumption played a role in its rationale, which was based on the proposition that a local church corporation in that case, like any trustor in California trust law, had the presumptive power to rescind a trust it had created. In direct contrast to *Guardian Angel* (see *California-Nevada, supra*, 121 Cal.App.4th at p. 771 [acknowledging the opinion to be "at odds" with *Guardian Angel*], the *California-Nevada* court explicitly rejected the idea that a general church's constitution could be dispositive, and did so on the

ground that it would merely re-import hierarchical theory back into California law. (See *id.* at p. 772 ["Although the hierarchical theory has supposedly been rejected in California, it will nevertheless live on under the label of 'neutral principles of law,' if a church's own rules are viewed as trumping state statutes."].)

On the other hand, it is further noteworthy that the *California-Nevada* court assumed that hierarchical theory was discredited *despite* its use by *Korean United* court. To be sure, the *California-Nevada* court did make it clear that it disagreed with the *Korean United* opinion on the question of whether section 9142 created any *presumptive* trusts in favor of a general church, finding *Korean United's* reliance on the Ballentine & Sterling treatise misplaced, because the statute itself does not use any variation of the word "presumed." (*California-Nevada, supra*, 121 Cal.App.4th at p. 770 ["*Korean United* . . . describes . . . 9142 as providing 'presumptive rules . . . .' This language appears to have come from a treatise . . . . Nothing in the statute itself, however, uses the word 'presumption' or 'presumed.'"].)

On the other hand, one doesn't find in the opinion any confrontation with the fact that *Korean United* had relied upon the organizational principle as one of its several independent rationales to decide in favor of the general church.

Rather, for the *California-Nevada* court, the analysis of the church property dispute was a relatively straight-forward trust problem: In 1948, a local Methodist church incorporated with the express purpose of holding the church property in trust for

benefit of the *local* church, albeit also with the purpose of maintaining a local church "as a part of and affiliated with the Methodist Denomination." (*California-Nevada, supra*, 121 Cal.App.4th at pp. 757-758.) When an (unspecified) doctrinal dispute arose in the United Methodist Church in 1999 and 2000, the Methodist bishop attempted to replace the (apparently popular) existing local pastor. The local pastor (or his supporters) locked out the new pastor. The regional conference of the general church and related entities then sued the local church corporation for breach of charitable trust. (*Id.* at p. 760.) The trial court reasoned that (a) a trust did indeed exist in favor of the general church and (b) the trust could not be unilaterally revoked by the local church corporation. (See *id.* at p. 761.)

The appellate court agreed with (a) -- finding substantial evidence to support the idea that certain properties were indeed held by the local church corporation in trust for the general church. But, applying the traditional California rule that trusts are revocable unless expressly made irrevocable by the trust instrument (*California-Nevada, supra*, 121 Cal.App.4th at p. 767, quoting Prob. Code, § 15400), it disagreed with (b). It held that the local church could keep the property by revoking the trust.

The syllogism used by the court went this way: The local corporation put some property into a trust for the general church. The trust instruments (in *California-Nevada*, certain deeds[13]) had created

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[13] The case involved nine parcels, the deeds to five of which had trust language in favor of the general church. In an analysis that followed the four-step neutral-principles factors, the *California-Nevada* court found there was substantial evidence that

trusts for the general church (the deeds going to the local church corporation), but those instruments did not contain any language making the trust expressly irrevocable. Under California trust law, that made them revocable. Moreover, the fact that the constitution of the general church expressly provided that local churches hold property in trust for the general church was of no significance. "We know of no principle of trust law stating that a trust can be created by the declaration of a nonowner that the owner holds the property as trustee for the nonowner." (*California-Nevada, supra*, 121 Cal.App.4th at p. 769.) In essence, the *California-Nevada* court treated the local corporation as any other *initial* owner creating a revocable trust and wanting the property back.

The *California-Nevada* decision was also the first California decision in the church property dispute area to consider in any detail the impact of Corporations Code section 9142, enacted in 1982. (Although the statute had played a subsidiary role in the rationales of both *Korean United* and *Guardian Angel*.)

The *California-Nevada* court took the position that "various legislative history materials" including the digest of the Assembly's Third Reading of the bill indicated that the purpose of the bill was "'to limit a religious corporation's property subject to a charitable trust. It requires certain actions to take place in order for a gift of property to be considered a chari-

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the other four were intended to have such trust language and concluded that all parcels had been put into a trust for the benefit of the general church. (*California-Nevada, supra*, 121 Cal.App.4th at pp. 764-766.)

table trust.'" (*California-Nevada, supra*, 121 Cal.App.4th at p. 770, quoting Assembly Third Reading of Sen. Bill No. 1178 (1981-1982 Reg. Session.) Which was, as we have shown, correct.

However, the *California-Nevada* court also concluded, in construing subdivisions (c) and (d) in section 9142, that those subdivisions were enacted to, in effect, codify *Barker*. After pointing out that nonowners cannot create trusts in their favor, the court said: "A more reasonable reading of the statute is that subdivision (c)(2) was intended to be a codification or recognition of *Barker, supra*, 115 Cal.App.3d 599. This is especially so since subdivisions (c) and (d) were enacted shortly after *Barker* was decided. *Barker* was decided in January of 1981. Subdivisions (c) and (d) of Corporations Code section 9142 were enacted in 1982, and took effect in 1983." (*California-Nevada, supra*, 121 Cal.App.4th at p. 769.) That is, the court was rejecting the notion that a general church can "create a trust, in favor of itself" by amending its constitution or rules to so provide. (*Ibid.*)

The *California-Nevada* court provided no authority for the idea that subdivisions (c) and (d) were enacted to codify *Barker*. We have already demonstrated in great detail that the idea is incorrect.

5. Concord Christian

And now we come to the latest church property dispute in California to date, *Concord Christian, supra*, 132 Cal.App.4th 1396. *Concord Christian* is remarkable in that it confronted what appears to be the main (potential) difficulty with the *Watson* principle of government approach, namely whether it

would require a civil adjudication of whether a church really was hierarchical or congregational. That adjudication might, in turn, implicate the civil court in theological controversy.

It bears emphasizing that in all the cases we have reviewed in this opinion, we have encountered no real disputes over the question of the *nature* of the church's organization. In *Concord Christian*, however, there had been an actual dispute over whether the denomination with which the secessionist local church had been formerly affiliated was hierarchical or congregational. The issue had been "'vigorously dispute[d]'" in the trial court with substantial evidence coming from "both sides." (*Concord Christian, supra*, 132 Cal.App.4th at p. 1409.)

However, as it turned out, there was no occasion to wade into religious controversy at all: The constitution and by-laws of the general church plus the *history* of the local congregation and the "actions of the parties" (for example, by the secessionist pastor acknowledging the authority of the denomination before the split) provided not only substantial evidence to support the trial court's finding that the denomination was hierarchical, but also established that the local congregation had never been a "'strictly independent'" church "free of other ecclesiastical associations." (See *Concord Christian, supra*, 132 Cal.App.4th at pp. 1409-1411.)

Like other post-*Barker* appellate opinions, *Concord Christian* operated on the premise that California law *is* the "neutral principles of law" approach, but seemed to equate the principle of government approach *with* such neutral principles. Consider this passage: "California courts apply the neutral princi-

ples of law approach, taking care in resolving church property disputes not to make determinations of underlying controversies over religious doctrine and polity. [Citations.] Accordingly, even where the matter at issue in a church dispute involves questions of ownership of property and assets, *civil courts applying neutral principles of law must defer to the authoritative decisions of hierarchical ecclesiastical bodies on any matters of internal church polity necessarily involved in resolving the issue.* [Citations.]" (*Concord Christian, supra,* 132 Cal.App.4th at p. 1412, italics added.) The same sentiments might just as easily have been expressed by our state's high court in *Wheelock, Committee of Missions,* or *Horsman.*

H. Application

The rule of stare decisis reminds us that that common law is usually not the product of any one particular decision only, but of many generations of jurists focusing on a particular problem. In the case before us, for example, we have now ascertained that the approach articulated by the highest court in this state -- directly in *Baker, Wheelock, Committee of Missions, Horsman* and *Providence Baptist,* and indirectly in *Rosicrucian Fellowship* -- has never been overruled or occluded by decisions of the United States Supreme Court. We have demonstrated that the federal supreme court has done nothing to affect the viability of these cases.

Of course, as a matter of state law (apart from matters of constitutional law), the Legislature can supersede decisions of a state's highest court. And yet we have also seen that nothing the Legislature has done would affect the principle of government

approach in this case, where clear and convincing evidence exists that the "governing instrument" of a "general church" expressly impresses a trust on the property of a local church corporation.

In short, both stare decisis (at least in this case with Canon I.7(4)), *and* the proper construction of section 9142, coterminously favor the position of the general church. It is clear, then, that the trial court erred as to the second prong, going to the merits, of the anti-SLAPP statute in dismissing the case.

Now, it is not uncommon for appellate courts to bolster the result in a case before them by explaining that an alternative rationale leads to the same result. That happened in *Korean United*, where the court used the approach dictated by stare decisis (the principle of government) and then also reached the same result under the four-factor neutral principles approach.

In this case, however, we have decided that we should not engage in that sort of overkill. To be plain: Under the California Supreme Court cases of *Baker*, *Wheelock*, *Committee of Missions*, *Horsman*, and *Providence Baptist* (which are consistent with *Rosicrucian Fellowship* as well), the right of the general church in this case to enforce a trust on the local parish property is clear, and that right has not been affected by intervening United States Supreme Court decisions or any statute enacted by the Legislature. To the degree that section 9142 alters the common law rule enunciated by these cases, that alteration *duplicates* the result required under the common law given the facts of this case.

V. DISPOSITION

The judgments of dismissal against the diocese and the national church are both reversed. Further proceedings shall be consistent with this opinion. Appellants shall recover their costs on appeal.

SILLS, P. J.

WE CONCUR:
MOORE, J.
FYBEL, J.

APPENDIX C

TRIAL COURT JUDGMENTS

September 9, 2005

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE – CENTRAL JUSTICE CENTER

Coordination Proceeding Special Title (Rule 1550(b))

EPISCOPAL CHURCH CASES

Included Actions:
Rasmussen v. The Rev. Praveen Bunyan;
Adair v. The Rev. Jose Poch; and
O'Halloran v. The Rev. William A. Thompson.

JUDICIAL COUNCIL COORDINATON PROCEEDING NO. 4392

Orange County Case No. 04CC00647 and
Los Angeles County Case Nos. BC321101 and BC321102

Assigned for All Purposes to The Hon. David C. Velasquez, CX-101

STATEMENT OF DECISION AND ORDER ON *RASMUSSEN* DEFENDANTS' SPECIAL MOTION TO STRIKE PLAINTIFFS' FIRST AMENDED COMPLAINT AS A STRATEGIC LAWSUIT AGAINST PUBLIC PARTICIPATION

[Cal. Code Civ. Proc. § 425.16]

Date Action Filed: September 7, 2004

Defendants' Special motion to Strike the First Amended Complaint (Anti-SLAPP) in the Rasmussen Case: *Granted without leave to amend.*

I. Evidentiary Rulings

The court has considered all evidentiary objections, and they are overruled except as specifically ruled upon as follows:

A. Declaration of David R. Tumilty:

¶ 3 sustained as hearsay and lack of personal knowledge. The witness does not state the basis of his personal knowledge of what occurred in 1947, whether he was present at the purported meeting of the members of the parish or whether he recognizes the signatures of the purported signatories to Exhibit A.

¶ 7 sustained as hearsay and lack of personal knowledge, and improper legal opinion. The witness does not state the basis of his personal knowledge of how the parish has conducted its affairs in the prior 55 years or in 1991.

¶ 10 sustained in part. The phrase, "made clear its intention to retain the real property of the Episcopal Church and Diocese" is speculation, hearsay and lacks personal knowledge.

¶ 16 sustained as irrelevant.

B. Declaration of George W. Cummings:

¶ 5 sustained as irrelevant and as improper legal conclusion.

¶ 6 sustained as irrelevant.

¶ 9 sustained in part as to the phrase "and shall be conveyed to the Diocese upon dissolution of a parish" as irrelevant. No evidence has been presented that the parish has dissolved.

C. Declaration of Rev. Dr. J. Robert Wright:

¶¶ 2(a), (b), (c), and 3, are irrelevant.

¶ 4, a hypothetical, is irrelevant. The witness has also been called upon to opine "[w]hether. . . a parish holds its property in trust for use in furthering the mission of its diocese and the Episcopal Church." As such, the question calls for impermissible legal conclusion.

¶¶ 11 and 12 are irrelevant.

¶ 14 is sustained as to the second sentence starting, "Thus, all clergy," and ending, "canons of the Church," as irrelevant.

¶ 16 is sustained as to the second sentence starting, "In short," and ending, "of the congregation" as improper legal conclusion and irrelevant.

¶ 17 as irrelevant and improper legal conclusion.

¶ 18 is sustained in part from the first sentence through "Sec. 3" as irrelevant and improper legal opinion.

¶ 19 is sustained as to the first through third sentences starting with the words, "Sections 2 and

3," and ending, "enforced by the civil courts," as irrelevant and improper opinion.

¶ 20 is sustained as irrelevant. There is no evidence that the property has been encumbered or alienated.

¶¶ 22 through 46 are sustained as irrelevant and improper opinion.

II. Discussion of the Merits

Plaintiffs allege the defendants have "wrongfully seized control of St. James Episcopal Parish, . . . prevented the faithful members from worshiping [there] and diverted Parish assets to their own use. Defendants have prevented the true leadership of the Parish from exercising its authority and, instead, have attempted to affiliate the Parish with a non-Episcopal church in Uganda." (First Amended Complaint ("FAC"), ¶ 1.) All of the instant causes of action, except breach of contract, promissory estoppels and unjust enrichment, are based on the assertion the defendants hold parish property under an express trust for the benefit of plaintiff the Protestant Episcopal Church in the Diocese of Los Angeles ("the Church") pursuant to the Canons of the Church, incorporated into the parish's articles of incorporation and bylaws. Plaintiffs claim the defendants are wrongfully withholding possession of the parish property from the "true members" of the parish. Plaintiffs contend defendants breached the terms of the trust when defendants announced they were severing their ties with the Church and claimed the right to sole management and control of parish property, to the exclusion of the Church, because of an

ecclesiastical dispute over "core doctrinal issues" of the Church. (FAC ¶¶ 2-3.) Plaintiffs allege defendants purported to amend the parish bylaws in March 2004 to exclude all references to the Church. (FAC ¶ 63.) They assert the amendment of the parish bylaws and articles of incorporation were illegal. (FAC ¶ 91(g).) Defendants are alleged to have "betrayed" the Church. (FAC § VI.B.) Plaintiffs allege that some members of the Church have expressed disagreement with the consecration of a homosexual bishop, but have kept such expression within the Church. "Defendants, however, chose a different path." (FAC ¶¶ 69 and 70.) "Rather than pursue their dissent through religious channels," defendants have "conspired, plotted and schemed" against the Church. (FAC ¶ 70.) Plaintiffs allege that defendants Bunyan, Menees and Adams violated their ordination vows, and canonical and California law "by pledging their loyalty to the ecclesiastical authority of the Church of Uganda." (FAC ¶ 72.) Defendants allegedly refused to distribute a Bishop's letter urging the dissenters to return to the flock "and instead used [the parish] to make unfounded statements to the public that [the Church is] 'unbiblical' or 'unorthodox.'" (FAC ¶¶ 79-80.) In August 2004, defendant Bunyan announced his disaffiliation from the Church and issued a press release announcing he will no longer be affiliated with the Church. (FAC ¶ 74.) Following that, the Church, through its bishop and counsel, sent a letter to defendants "requesting they obey the conclusive rulings of the Episcopal Church, surrender control of the real and personal property of the Church, and allow faithful Episcopalians to worship at the Parish." (FAC ¶ 84.) But, it

is alleged, defendants refused all requests. (FAC ¶ 85.) Defendants are alleged to have denied plaintiffs access to parish records and use of parish property, and have stopped sending money to the Diocese. (FAC ¶¶ 86 and 88.) Before seceding from the Church, defendants had platted and conspired to misappropriate Church property, solicit donations in the name of the Church and solicit members of the Church to disaffiliate from it. (FAC ¶ 107.)

As relief, plaintiffs seek a declaration from the court that the Church has already determined who are the loyal members of the Church and true members and leaders of the parishes, and who has the right to control and manage parish property. Plaintiffs seek a declaration of the court that parish property is held in trust in favor of the Church and irrevocably dedicated for use by the Church. Plaintiffs seek restoration of the property under the guidance of the "lawful Priest-in-charge" and a declaration the amended articles of incorporation are invalid. Plaintiffs seek a declaration that the Church owns and controls the "Church Corporation" comprised of the "Priest-in-Charge, Wardens and Vestry of the Parish." Plaintiffs want defendants enjoined from interfering with the right of the Church and the rightful members of the parish to freely use and enjoy the property. Plaintiffs seek an accounting, damages and costs.

Under the provisions of the anti-SLAPP, a cause of action that arises from the defendant's acts in furtherance of the right of petition or free speech, in connection with a public issue, is subject to a special motion to strike, unless there is the probability that plaintiff will prevail on the merits. A defendant's

threshold burden is to demonstrate that the plaintiff's action arose from the defendant's protected constitutional speech or petition rights. (*City of Cotati v. Cashman* (2002) 29 Cal. 4th 69, 76.) A defendant carries its initial burden under the anti-SLAPP if it makes a *prima facie* showing the lawsuit "arises" from defendant's exercise of free speech or petition rights. (*Navellier v. Sletten* (2002) 29 Cal. 4th 82, 89; *Equilon v. Consumer* (2002) 29 Cal. 4th 53.) A lawsuit "arises" from a defendant's exercise of the right of free speech or petition if the acts on which the lawsuit is based were "in furtherance" of the defendant's exercise of free speech or petition rights. (*Governor Gray Davis v. American,* (2002) 102 Cal. App. 4th 449, 456.) The phrase "'cause of action ... arising from' means simply that the defendant's act underlying the plaintiff's cause of action must itself have been an act in furtherance of the right of petition or free speech. [Citation.] In the anti-SLAPP context, the critical point is whether the plaintiff's cause of action itself was *based on* an act in furtherance of the defendant's right of petition or free speech. [Citation.]" (*Gallimore v. State Farm Fire & Casualty Ins. Co.* (2002) 102 Cal. App. 4th 1388, 1398.) Once the defendant makes such a showing, the burden shifts to the plaintiff to produce *prima facie* evidence of its claims. (*CCP* § 425.16(b)(1); *Governor Gray Davis v. American*, 102 Cal. App. 4th, *supra*, at 456; and *Walker v. Koussis* (2001) 93 Cal. App. 4th 1432.) "In making its determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based." (*CCP* § 425.16(b)(2).)

As used in the anti-SLAPP, "'act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue'" includes: (1) any written or oral statement or writing made before [an] ... executive, ... or any other official proceeding authorized by law; (2) any written or oral statement or writing made in connection with an issue under consideration or review by [an] ... executive, ... or any other official proceeding authorized by law; (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest; (4) or any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." (*CCP* § 425.16(e).)

One of the purposes of the anti-SLAPP is to encourage continued participation in matters of "public significance." (*CCP* § 425.16(a).) "To this end, this section shall be construed broadly." (*Id.*)

Is the complaint subject to the anti-SLAPP?

The court does not find that the filing of the parish's amended articles of incorporation constitutes a statement or writing made before an executive, or other official proceeding authorized by law. Nor does it qualify as a statement or writing made in connection with an issue under consideration or review by an executive, or other official proceeding authorized by law. (*CCP* § 425.16(e).) The filing of the amended articles of incorporation is purely ministerial in nature. Such an act does not occur in the context of a

"proceeding" within the meaning of the anti-SLAPP, nor does it involve any official consideration or review, or the exercise of official discretion.

However, the court finds the defendants have carried their initial burden by presenting *prima facie* evidence the acts on which the lawsuit is based were in furtherance of defendant's exercise of free speech in connection with a public issue. The terms of the anti-SLAPP are to be broadly construed to protect not only literal speech but also any act designed to further a person's right to free expression, including expressive conduct and nonverbal acts to advance the person's right to free speech. (*CCP* § 425.16(b)(1).) See *Thomas v. Quintero* (2005) 126 Cal. App. 4th 635.) The court finds defendants have made a *prima facie* showing they are being sued for acts arising from and in furtherance of their publicly expressed disagreement with the Church's views concerning the consecration of homosexual clergy, specifically by voting to break ties with the Church, by amending the parish's articles of incorporation, and submitting a press release announcing the reasons for the separation. Such acts arise out of and are in furtherance of the defendants' exercise of the right to speak on a matter of "public interest."

Defendants have presented sufficient evidence from which it can be inferred that but for their actions disassociating themselves from the Church's views on religious doctrine the lawsuit would not have been filed. It is the gravamen of the complaint which governs whether the anti-SLAPP should apply. (*Navellier v. Sletten, supra.*) The root of the instant controversy is defendants' public disaffiliation from the Church over doctrinal issues rather than

simply an alleged change in the control of the property. In reading the complaint, it is quite clear that the acts which are the basis of the lawsuit arise from defendants' rejection of the Church's doctrinal views and public announcement of disassociation from the Church. For example, the complaint alleges "[d]efendants ... violated their ordination vows ... by pledging their loyalty to the ecclesiastical authority" of another church. Also, it is alleged "[d]efendants ... used the ... Parish to make unfounded statements to the public that the Episcopal Church, the Diocese and the Bishop are 'unbiblical' and 'unorthodox.'" Even plaintiffs' declarations in support of its opposition predominately concern defendants' alleged ecclesiastical wrongdoing and disloyalty to the Church in refusing to be bound by the rules of their former religious affiliation.

Further, the views expressed by the defendants concern matters of public interest. How churches in America are reacting to the different viewpoints on homosexuality is currently a topic of much public significance. The variety of religious perspectives on homosexuality, the degree to which gays may participate in church activity, and the ability of local congregations to separate from their larger affiliations because of their differing convictions on matters such as these are the subject of much public debate and discourse at the present time. It is a subject which has gained international attention in the news media. Therefore, because the steps taken by the defendants to disassociate themselves from the religious views of the Church constitute acts in furtherance of the exercise of defendants' rights to free

speech on a matter of public interest, the complaint is subject to a special motion to strike.

Have plaintiffs shown the likelihood of prevailing on the merits?

The court finds that the plaintiffs have not carried their burden to show they will probably succeed on the merits. To defeat the motion, plaintiffs must state a legally sufficient claim and must provide sufficient competent evidence to support a ruling in plaintiffs' favor on the merits. (*Walker v. Kioussis* (2001) 93 Cal. App. 4th 1432.) The trial court does not weigh the evidence, but must accept as true all inferences favorable to the plaintiffs. (*Dixon v. Superior Court* (1994) 30 Cal. App. 4th 733.) The court finds that plaintiffs have not established a legally cognizable claim supported by competent evidence.

In support of their claims, plaintiffs rely on legal propositions which are not the law in California. They contend the courts must defer to Canon law in resolving disputes over church property. (*See Jones v. Wolf* (1979) 443 U.S. 595.) In essence, plaintiffs' theory is that church law, principally Church Canon 1.7(4) and Diocesan Canon 3.05.1, creates an irrevocable trust over parish property. Plaintiffs allege that defendants and the historical leaders of the parish took an oath to obey and submit to the hierarchical authority of the Church. Church Canon 1.7(4) was enacted in 1979. No evidence has been presented of the date Diocesan Canon 3.05.1 was enacted. Plaintiffs further argue that the Church has already determined which congregants represent the

true Church with the right to possess and control parish property.

Plaintiffs urge the court to apply the "hierarchical theory" in determining which party has the right to control parish property. Under the "hierarchical theory," "centralized control over church property supercedes civil law disposition of church property. Under a hierarchical system of church governance the canons and rules of the general church override any disposition of local church property mandated by state law." (*Protestant Episcopal Church in the Diocese of Los Angeles v. Barker* (1981) 115 Cal. App. 3d 599, 606.) However, California courts are not bound by Canon law. And the hierarchical theory of resolving disputes over church property has been repudiated by California courts. (*Protestant Episcopal Church in the Diocese of Los Angeles v. Barker,* 115 Cal. App. 3d at 615.) Instead, California follows neutral principles of law in resolving church disputes over church property by relying on (1) the deeds to church property; (2) the articles of incorporation of the local church; (3) state statutes; and (4) the rules of the general church. (*Protestant Episcopal Church in the Diocese of Los Angeles v. Barker, supra,* at 621.)

No evidence has been presented that a trust over parish property has been created under statutory law. *Corporations Code* § 9142 provides in pertinent part as follows:

> (c) No assets of a religious corporation are or shall be deemed to be impressed with any trust, express or implied, statutory or at common law unless one of the following applies:

> (1) Unless, and only to the extent that, the assets were received by the corporation with an express commitment by resolution of its board of directors to so hold those assets in trust.
>
> (2) Unless, and only to the extent that, the articles or bylaws of the corporation, or the governing instruments of a superior religious body or general church of which the corporation is a member, so expressly provide.
>
> (3) Unless, and only to the extent that, the donor expressly imposed a trust, in writing, at the time of the gift or donation.

No evidence has been presented that the parish, its board or its governing documents contain an express commitment to place parish property in trust for the benefit of the Church.

According to the grant deed to the real property of the Saint James Parish, recorded July 3, 1950, and amended July 21, 1951, the property was granted for the valuable consideration of $100 by the Bishop of the Protestant Episcopal Church in Los Angeles, "a corporation sole," to the Rector, Wardens and Vestrymen of the Saint James Parish. Plaintiffs have not presented evidence that title to the parish property has ever been held in the name of any person or entity other than the parish since the time it was conveyed to the parish. There is nothing on the face of the deed suggestive of a trust in favor of the grantor. It is undisputed that any capital improvement or expansion of parish property was done only after approval by the Diocese. However, according to

the exhibits presented by the plaintiffs in opposition to the motion, the cost for the purchase of adjacent property and building construction was born solely by the parish. Further, the original articles of incorporation, filed March 1, 1949, do not expressly declare the creation of a trust over parish property in favor of either the Church or the Diocese, although the articles do incorporate the bylaws and articles of the church and diocese into the bylaws and articles of the parish. The parish articles of incorporation state the parish is a "constituent part" of the greater church, but does not state the parish is a "subordinate body" of the Church. (*Cf. Protestant Episcopal Church in the Diocese of Los Angeles v. Barker, supra,* at 607-609 [articles of incorporation of St. Matthias, St. Mary's Church and Our Savior Church provide the parishes are "constituent" parts of the PECUSA but not a "subordinate body" of the larger church].) The 1991 amendments to the parish articles of incorporation add that the property of the parish is "irrevocably dedicated to religious or charitable purposes" without any specific mention of either the Church or the diocese.

In determining whether property is subject to an express trust, it is presumed that the person in whose name the legal title to property is recorded is the owner of the full beneficial title to the property. (*Protestant Episcopal Church in the Diocese of Los Angeles v. Barker, supra,* at 605.) "Under neutral principles of law if a local body affiliated with a national body holds title to property in its own name and later secedes, the national body has little basis to claim that such property is held in trust for it. (Citation.) If a local organization secedes from one

national entity and affiliates with another, absent other factors no claim can be laid to property owned by and held in the name of the local organization.... In such instances valid claims may exist for *breach of contract,*... but ordinarily no express trust arises against the property of the local organization..., [T]he same is true of a local church organization which changes affiliation from one general church to another." (*Protestant Episcopal Church in the Diocese of Los Angeles v. Barker, supra,* at 622, emphasis added.) Plaintiffs have not produced competent evidence of an express trust.

The court further finds that plaintiffs cannot support the cause of action for breach of contract. It is rather evident that the promises on which the breach of contract claim is based (FAC, ¶ 94) track the language described in the articles of incorporation of the Holy Apostles Church involved in the *Barker* case, namely, that the Holy Apostles Church is a "subordinate body" of the larger church whose property reverts to the national church upon surrender or revocation of the charter. (*Protestant Episcopal Church in the Diocese of Los Angeles v. Barker, supra,* at 609-610.) But in the instant action, there is nothing in the St. James Parish's original articles of incorporation suggesting the founders of the parish promised to make it a subordinate body of the larger Church or that the property would revert specifically to the Church upon surrender or revocation of the parish charter. It is true that the parish's original articles of incorporation state that the Canon law and constitution of the Church shall be part of the parish's articles and bylaws. But nothing in the parish's articles of incorporation conveys the

idea that parish founders intended the local church to be a subordinate body of the greater Church. Further, nothing in either the original or amended articles of incorporation of the parish states that its property would revert specifically to the Church upon revocation of the parish charter. Under the "objective" rule of contract interpretation, the unexpressed intentions of the parties do not become terms of the contract between them. Thus, it cannot be said that the parish founders intended to incorporate the provisions of Canon 1.7(4) into the parish articles of incorporation decades before the Canon was even enacted.

There is no evidence the pre-incorporation association expressed to the Church a promise to make the parish a subordinate body of the larger Church. In fact the evidence is to the contrary. In the resolution of the Bishop's Committee of the St. James Mission, dated January 20, 1947, they state:

> We . . . respectfully request your permission to proceed with the organization of said mission into a Parish. ¶ We promise and declare that the said Parish shall be forever held under and conform to and be bound by the Ecclesiastical Authority of the Bishop of Los Angeles and of his successors in office, the Constitution and Canons of the Church now known as the Episcopal Church in the United States of America, and the Constitution and Canons of the Diocese of Los Angeles. (Declaration of David R. Tumilty, *Rasmussen*, Exhibit "A.")

No intent was therein expressed by the founding Bishop's Committee to make the parish a subordinate body of the greater Church.

Plaintiffs have not carried their burden of producing *prima facie* proof of their causes of action for promissory estoppels or unjust enrichment. An otherwise unenforceable contract may still be enforced if it was reasonably foreseeable that the promise of the promisor would reasonably induce the promise to either act, or refrain from acting, the promise is so induced, and injustice can be avoided only by enforcement of the promise. (1 *Witkin, Summary 9th* (1990) Contracts, § 323, p. 303.) "The oral agreement will be held binding, regardless of the absence of any representation by the defendant, if (a) the plaintiff, in reliance upon it, has so changed his position that *unconscionable* injury would be suffered, or (b) the defendant, having accepted the benefits of the oral contract, would be *unjustly* enriched by nonenforcement." (1 *Witkin, Summary 9th* (1990) Contracts, §325, p. 305, emphasis added.) In the present case, the court's attention is not drawn to any particular evidence which would support the inference that not enforcing the alleged agreement would result in an injustice, unconscionable injury or unjust enrichment. Even assuming, for purposes of argument, that plaintiffs were reasonably induced to change their position as the result of defendants' promise to "forever" be bound to Church law, the court is left to guess what evidence plaintiffs would offer in support of such findings.

Given the fact that the evidence of the deed to parish property, the articles of incorporation of the parish, and the rules of the general church will not

change, the court finds no reasonable likelihood that a viable cause of action can be stated by the plaintiffs to recover the property or damages related to the property. Therefore, leave to amend is denied.

IT IS SO ORDERED.

Dated: 09-09-05

/s/ David C. Velasquez
The Hon. David C. Velasquez
Judge of the Superior Court

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February 6, 2006

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE – CENTRAL JUSTICE CENTER

Coordination Proceeding Special Title (Rule 1550(b))

EPISCOPAL CHURCH CASES

Included Actions:

Rasmussen v. The Rev. Praveen Bunyan (Orange County Case Number 04CC00647);

Adair v. The Rev. Jose Poch (Los Angeles County Case Number BC321101); and

O'Halloran v. The Rev. William A. Thompson (Los Angeles County Case Number BC321102).

JUDICIAL COUNCIL COORDINATON PROCEEDING NO. 4392

Assigned for All Purposes to Hon. David C. Velasquez, Judge, CX-101

Complaints Filed: Sept. 7, 2004

STATEMENT OF DECISION AND ORDER ON *ADAIR, O'HALLOHAN* AND *RASMUSSEN* DE-FENDANTS' DEMURRERS TO PLAIN-TIFFS' IN INTERVENTION FIRST AMENDED COM-PLAINT IN INTERVENTION

Date Action Filed: September 7, 2004

Date: January 12, 2005
Time: 1:30 p.m.
Dept: CX101

Demurrers to First Amended Complaints in Intervention (Rasmussen, Adair and 0'Halloran):

Sustained without leave to amend.

The requests for judicial notice are granted.

To the extent the complaints in intervention seek declarations of the "status of [the local Churches'] as parish[s] of the Episcopal Church, [and] the identity of [the local churches'] true leadership" (First Amended Complaints in Intervention, ¶31 (All Saints') and ¶36 (St. David's), plaintiffs in intervention lack standing to sue. "A corporate outsider cannot bring suit to challenge a corporation's management or control. Only a shareholder, officer, or director has standing to do so. (See 9 Witkin, Summary of Cal. Law (9th ed. 1989) Corporations, § 127, p. 626.)" *(Korean Philadelphia Presbyterian Church v. California Presbytery* (2000) 77 Cal.App.4th 1069, 1083) Plaintiff in intervention does not satisfy any of those requirements.

As to plaintiff in intervention's second claim, insufficient facts have been alleged to state a cause of action for the imposition of an irrevocable trust in its favor. Despite the opportunity to do so, plaintiff in intervention has not added anything legally material to the First Amended Complaints in Intervention. None of the Articles of Incorporation or amendments thereto, refers to the defendant parishes as organizations "subordinate" to plaintiff in intervention. None of the grant deeds granting property to the defendant parishes refers to plaintiff in intervention, nor is there any mention of the intent of the grantors and grantee to impose a trust over any of the proper-

ties. No document has been alleged or brought to the court's attention in a request for judicial notice constituting a declaration of irrevocable trust, or transfer of irrevocable trust by deed or will in favor of the plaintiff in intervention. *(Califomia-Nevada Annual Conference v. St. Luke's United Methodist Church* (2004) 121 Cal.App.4th 754, 767.) Even if sufficient facts have been alleged to state a cause of action for implied trust, for purposes of argument, the vote of the parish boards of directors to disaffiliate from the national church constitutes a revocation of such trusts. (Id. at 768.) The court has nothing further to add in support of its ruling herein than was stated in its ruling of October 27, 2005, when the court sustained the demurrers to the initial complaints in intervention. Such rationale is incorporated herein.

Lastly, the individual board member defendants in the Rasmussen case assert they are immune as volunteers under the provisions of the federal Volunteer Protection Act (42 USC §§14501 et seq.) However, no facts appear on the face of the complaint from which it may be inferred that these defendants are volunteers.

IT IS ORDERED.

Dated: Feb. 6, 2006 /s/ David C. Velasquez
The Hon. David C. Velasquez
Judge of the Superior Court

APPENDIX D
ORDER DENYING REHEARING

Court of Appeal, Fourth Appellate District, Div. 3 –
Nos. G036096/G036408/G036868

S155094

IN THE SUPREME COURT OF CALIFORNIA

En Banc

EPISCOPAL CHURCH CASES

The request for judicial notice, filed January 29, 2009 is granted.
The opinion is modified.
The petition for rehearing is denied.

Filed Feb. 25, 2009.

/s/ George
Chief Justice

APPENDIX E

1. STATUTES, ETC. (IF NOT IN PETITION TEXT)
2. References in lower court record to where federal questions were raised??
3. COMPLAINT??
4. Any other matter we think is necessary??